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CENTRALIZING TENDENCIES IN THE ADMINISTRATION OF INDIANA

BY

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CHAPTER I

INTRODUCTION[1]

By administration is meant that department of government which is concerned with the detailed execution of the will of the state as it is manifested in the laws. It is to be distinguished from the legislative department, which expresses the will of the state. It is also distinct from the judicial authority, which applies the law to specific cases as they arise, and from the executive *par excellence*, which is responsible for the general supervision of the execution of the state will.[1]

Students of political science have observed in the United States a strong tendency towards centralization in the Federal[2] and municipal[3] administrations. In state administration, likewise, a similar movement has recently been described.[4] The preparation of this paper was undertaken

[1] Goodnow, Frank J., *Politics and Administration*, p. 17. "The authorities which are attending to the scientific, technical, and, so to speak, commercial activities of the government.....are.....known as administrative authorities." *Ibid.*

[2] Goodnow, F. J., *Administrative Law*, i, pp. 62–74, and *Politics and Administration*, p. 118; Bryce, James, *The American Commonwealth*, i, ch. ix.

[3] Goodnow, F. J., *Administrative Law*, i, pp. 207–213, and *Municipal Problems*, ch. x; Bryce, James, *The American Commonwealth*, ch. lii; Wilcox, D. F., *The Study of City Government*, pp. 189, 191–202; Fairlie, John A., *Municipal Administration*, pp. 96–8.

[4] Webster, W. C., *Recent Centralizing Tendencies in State Educational Administration*, Col. Univ. Studies, viii, no. 2; Whitten, R. H., *Public Administration in Massachusetts. Ibid.*, viii, no. 4; Fairlie, J. A., *The Centralization of Administration in New York State. Ibid.*, ix, no. 3; Sites, C. M. L., *Centralized Administration of Liquor Laws in the American Commonwealths. Ibid.*, x, no. 5.

with a view of ascertaining to what extent this centralization has progressed in Indiana; and what effects, if any, it has produced upon the efficiency and economy of the administration.

In order to give the proper setting it is deemed advisable to preface the discussion by a brief historical outline of the government of Indiana prior to its admission as a State.

Under French dominion there was in what is now Indiana, scarcely anything that could be called local civil government. For administrative purposes Indiana was divided somewhat indefinitely between the provinces of Louisiana and Canada. Vincennes was in the Illinois district of Louisiana, and was governed from New Orleans through Fort Chartres, Illinois.[1] Each district in this part of New France had its own commandant, who exercised authority as superintendent of police and justice of the peace.[2] The people had no conception of local self-government, nor even of trial by jury. They trusted every thing to the character and authority of those appointed over them.[3] They were careless, easy-going and contented; honest in their business transactions; and simple in their manner of living.[4] The multitude of functions exercised by the modern state and municipal governments was unknown to them. Hence, there was little occasion for the formal enforcement of law and no necessity for an elaborate system of civil administration.

Even after this territory had been transferred to Great Britain in 1763, there was no introduction of civil govern-

[1] Dunn. J. P., *Indiana*, p. 58.

[2] Law, *Colonial History of Vincennes*, p. 10; Breese, *Early History of Illinois*, p. 216.

[3] Walker, C. I., *The Northwest during the Revolution*, in *Michigan Pioneer Collections*, vol. iii, p. 14.

[4] Dunn, *op. cit.*, pp. 94–7; Law, p. 16; Breese, pp. 220–2.

ment until 1774. Military officers appointed magistrates and defined their authority, which was enforced by the soldiers.[1] The well-known Act of 1774, extending the limits of the Province of Quebec to the Ohio and Mississippi Rivers, vested the legislative authority in the Governor and Council of Quebec, both appointed by the king. The criminal procedure of England and the civil procedure of France were established.[2] But this was little more than a paper system. Indeed, it was not until 1777[3] that English authority was exercised over the French inhabitants at Vincennes.[4] Though a civil government had a nominal existence at this time, justice was still dealt out in much the same way as under the preceding military regimé.[5]

On July 4, 1778, Colonel George Rogers Clark under a commission from Virginia captured Kaskaskia.[6] Almost as soon as the news of this event was received in Virginia, the Legislature of that State passed a temporary act establishing the County of Illinois,[7] including all the territory northwest of the Ohio River. The government provided by this law was highly centralized. The Governor of Virginia was empowered to appoint a county-lieutenant or commandant-in-chief of the county to hold during pleasure. He in turn had authority to designate as many deputy-commandants, militia officers and commissaries as he should think proper. The religious, civil and property rights of the inhabitants were guaranteed. All civil officers to whom the inhabitants had been accustomed for the preservation of peace and the administration of justice, were to be chosen by the citizens,

[1] Walker, *op. cit.*, p. 15.

[2] *Wisconsin Historical Collection*, xi, pp. 53–60.

[3] May 19. [4] Dunn, *op. cit.*, p. 81.

[5] Walker, *op. cit.*, p. 17.

[6] Dillon, J. B., *History of Indiana*, p. 124.

[7] Hening's *Statutes*, ix, pp. 552–5.

convened by the county-lieutenant for that purpose. They were to enforce such laws as the settlers had been accustomed to. The county-lieutenant had the power to grant pardons except in the case of murder and treason, and in such cases he could allow respites pending an appeal to the State. Under this authority civil government was actually inaugurated in May, 1779, and later the first election was held. Although the statute which vested the officers with powers expired in 1781, they held over until the arrival in 1787 of Colonel Harmar, representing the authority of the United States.[1] His successor, Major John F. Hamtramck, abolished the governmental machinery established by Virginia, and "remained for three years the autocrat of the Wabash, the sole legislative, executive and judicial authority."[2]

Such a condition of affairs could not be permanent. In fact, the Congress of the Confederation had begun the consideration of the proper method of governing this territory within a few months after the ratification of the Treaty of 1783. The Ordinance of 1784[3] provided a temporary government for the "Western Territory," though it was never put into actual operation. The Ordinance of 1785[4] providing "for ascertaining the mode of disposing of lands in the Western Territory" was of much greater significance. The following provisions only are of interest in this connection: "The surveyors shall proceed to divide the said territory into townships of six miles square,"[5] and "There shall be reserved the lot number 16 of every township, for the maintenance of public schools within the said township."[6] This law as confirmed by the Congress of the United States has

[1] Dunn, *op. cit.*, 155–7. [2] *Ibid.*, 262.

[3] *Journals of Congress*, vol. viii, pp. 153–5, Phila., John Dunlap.

[4] *Journals of Congress*, vol. ix, pp. 167–175.

[5] *Ibid.*, p. 168. [6] *Ibid.*, p. 171.

had a marked influence upon the economic and institutional development of the West.[1] Here was already provided in advance an endowment for the common schools and a unit for local administration. The effect upon the township government and upon the administration of school affairs will be noticed hereafter.[2]

The Ordinance of 1787[3] was probably the most important legislation fathered by the Congress of the Confederation. Certainly no other enactment left greater impress on the social, industrial and institutional life of the Northwest. It made provision for two grades of government. In the first stage the executive power of the territory was vested in a Governor; the judicial power, in a General Court composed of three Judges; and the legislative power in the Governor and Judges acting as a Legislative Council. These officers were appointed at first by Congress, and after the inauguration of the Federal Government, by the President. The legislative power was restricted by requiring the Governor and Judges to adopt and publish in the district such laws of the original States as might be necessary and best suited to the circumstances. These were to remain in force, unless disapproved by Congress, until the organization of the General Assembly.[4] The Governor was, for the time being, commander-in-chief of the militia, and had power to appoint and commission all inferior militia officers and such magistrates and other civil officers in each county or township as he should find necessary for the preservation of the good order and peace.[5] He was authorized to make proper divisions for the "execution of process, civil and criminal,"

[1] Shaw, A., *Local Government in Illinois*, p. 10, and Howard, *op. cit.*, 140.

[2] See pages 28 and 48 below.

[3] Poore, B. P., *Constitutions and Charters*, i, pp. 429–432.

[4] See page 20 below.

[5] *Ordinance of 1787*, Sec. 8; Poore's *Const. and Charters*, vol. i, p. 430.

and was instructed to lay out counties and townships, subject, however, to such alterations as might thereafter be made by the Legislature.

As soon as it could be shown that the Territory contained 5000 free male inhabitants, the people were entitled to a government of the second grade. This offered them an opportunity to participate in politics by electing a House of Representatives. The House nominated ten persons, five of whom were selected by Congress[1] to compose the Council. All legislative powers were thereupon vested in the General Assembly, consisting of the House, Council and Governor, with the absolute power of veto residing in the latter. There was a slight diminution of the powers of the Governor over the magistrates and other civil officers; for their powers and duties were regulated and defined by the Assembly. Their appointment, however, still rested with the Governor.

Under the authority of this constitution, civil government was inaugurated in the Northwest Territory in 1788.[2] By virtue of the powers conferred upon him,[3] Governor Arthur St. Clair proceeded to lay out counties, describe their boundaries, fix their county seats,[4] appoint local officers, and define their powers.[5] When the territory passed to the second grade the Legislature protested against the autocratic way in which the Governor exercised this authority. The controversy which arose between these two departments was not settled until the Governor was removed and Ohio was

[1] After 1789 by the President.

[2] Smith, W. H., *The Life and Public Services of Arthur St. Clair, with his Correspondence and other Papers.* (Hereafter referred to as the St. Clair Papers), i, pp. 140–1, p. 53.

[3] See page 19 above.

[4] *St. Clair Papers*, i, pp. 166, 195; ii, pp. 78–9, foot-note; pp. 131, 165, foot-note; p. 166, foot-note.

[5] *Ibid.*, ii, p. 79, foot-note; p. 80, foot-note.

admitted as a State.[1] Upon the organization of the Indiana Territory in 1800, a government of the first grade was established. In respect to the creation of counties, the Governor had absolute authority[2] until this was modified by legislative control[3] after the passage of the territory to the second grade of government.

In the county administration itself the most characteristic feature was the great authority which was vested in the courts. They were the first local civil offices established by law. Their jurisdiction was in the beginning wholly judicial.[4] Administrative powers were first given to the courts of general quarter sessions of the peace in 1790,[5] when they were directed to organize townships.[6] Later, the authority of this court and of the court of common pleas was extended by giving them considerable control over the levying and expenditure of the county revenue, the issuing and revoking of liquor licenses, the opening and regulation of the highways and ferries, the erection and care of county prisons, the appointment of many local officers and the examination and supervision of their accounts. The extent to which the local administration was centralized in the hands of the court is shown by their extensive power of appointment. Of the twenty-five county offices[7] established by law during this period, at least eight were filled by appointees of the courts; and eleven of the fifteen township officers were so appointed, two being filled by commissioners, who were

[1] *St. Clair Papers*, i, pp. 214, 221; ii, pp. 447–479; Burnet's *Notes*, p. 322.

[2] *Executive Journal of Indiana Territory* in *Indiana Hist. Soc. Pub.*, iii, pp. 77, 116.

[3] *Terr. Laws*, 1808, p. 3; 1810, pp. 14, 19, 40; 1813, pp. 67, 91; 1814, p. 15.

[4] Chase, S. P. (Ed.), *Statutes of Ohio and the Northwestern Territory* (1833), i, pp. 94–6.

[5] Chase, i, p. 107.

[6] See page 22, below.

[7] The twenty-five county offices and the fifteen township offices were not all in existence at the same time.

themselves appointed by the courts and two,[1] only, being elected by popular vote.

Provision for the organization of townships was made in 1790 by authorizing the courts of general quarter sessions of the peace to divide their respective counties into townships, having due regard to the extent of the country and the number of inhabitants.[2] They were also empowered to appoint in each township a clerk, a constable and one or more overseers for the poor. This subdivision of the county was not, at this time, given a separate corporate existence. It seems merely to have been a minor area formed to facilitate the administration of the county and State business. Five years later the functions of townships were somewhat enlarged by conferring upon them some authority in respect to elections, taxation[3] and the relief of the poor.[4] At the same time the overseers of the poor were declared to be "bodies politic and corporate;"[5] but the townships never became important administrative districts until after 1816.

The earliest permission for the incorporation of a town within the present bounds of Indiana was granted by the State of Virginia in 1783.[6] Under this authority the town of Clarksville was settled two years later. The Borough of Vincennes was the first town incorporated under the laws of the Territory of Indiana.[7] Villages certainly existed prior to that date, but they probably had no powers and no officers other than those belonging to the townships in which they were located. Several special town charters were granted by the general assembly of Indiana Territory. There was considerable variety in their organization and the

[1] Township assessors and auditors of the accounts of the overseers of the poor from 1795–1799.

[2] Chase, i, pp. 107–8.

[3] *Ibid.*, i, pp. 168 ff. [4] *Ibid.*, pp. 175 ff. [5] *Ibid.*, sec. 16.

[6] Hening's *Statutes*, vol. xi, p. 336. [7] *Territorial Laws*, 1805, p. 13.

extent of their powers. In some cases their authority was granted in quite broad and general terms; in others only a few specific powers were conferred. Practically the only field for local self-government was in the administration of these towns. The trustees of such corporations were generally elected by the resident land-holders[1] and were empowered to appoint the other town officers.

The intimate relation between the local administration and the territorial government is indicated by the arrangement which conferred upon the local courts almost complete control over the local government, and then made the members of the courts themselves the appointees of the territorial Governor. Besides, the chief executive appointed directly fifteen other county officers. The barriers in the way of local self-government set up by the Ordinance of 1787 have not been satisfactorily explained. The people themselves were favorably disposed towards this principle. The men who drafted and enacted the Ordinance were neither unfamiliar with, nor hostile to, such political ideas.[2] It was the opinion of Judge Chase that the temporary government was made unattractive so as to give the inhabitants strong reasons for entering the Union as States in order to enjoy greater political privileges.[3] It may have seemed necessary, also, to establish "a strong-toned government" in order to secure the rights of property among the frontier people.[4] It has also been suggested that the character of the population was an important consideration. In 1787 there were only a few widely scattered settlements, inhabited almost entirely by a people of French origin, who were unaccustomed and indifferent to local self-government.[5] The Ordi-

[1] For a short time the trustees of Vincennes were elected by co-optation.

[2] Compare the introduction to *The Executive Journal of Indiana Territory*, pp. 79–80, See also pages 30, 31, below.

[3] *Ibid.*, p. 81. [4] *Ibid.*, p. 81, R. H. Lee quoted. [5] *Ibid.*, pp. 81–2.

nance not only discouraged local self-government, but also revealed a distrust of legislative power. The high property qualification[1] required of electors and members of the General Assembly, the veto power of the Governor and his authority to convene, prorogue and dissolve the General Assembly, all reflect the conviction that the best interests of the inhabitants of the territory and of the Nation as a whole would be conserved by a concentration of power in the hands of an executive who would be more immediately responsible to the National Government.

While there was nominally a remarkable central control in the territorial government, this power does not seem to have been used arbitrarily nor even efficiently. Twenty-two of the twenty-five county officers served during good behavior or at the pleasure of the appointing power. But an examination of the Executive Journal of Indiana Territory reveals only one instance of the removal of a civil officer (a surveyor).[2] It is possible, however, that some of the numerous resignations were induced by pressure from the Governor. The failure to use this supervisory power effectually threw a heavier burden upon the Legislature.[3]

In studying the tendency towards centralization in administration in Indiana, the Public Schools command attention first. This is true, because in this field are found the earliest successful attempts in this direction, and because here is seen the most highly developed type of centralization. In the next chapter will be considered the establishment of the township system, the relation of State aid and central control, the evolution of the supervisory authorities, the present

[1] An elector was required to have a freehold of 50 acres; a representative, 200 acres, and a member of the legislative council, 500 acres. Sects. 9 and 11 of *Ordinance of 1787*.

[2] *Ex. Journ.*, p. 131.

[3] See below, ch. v, sec. 1.

administration of the school system, and the schools for special classes. In the third chapter will be discussed Charities and Corrections. In this sphere thorough centralization, although entering but recently, is quite complete. A brief historical sketch of the establishment of the State charitable and correctional institutions will be followed by a fuller consideration of the work and influence of the Board of State Charities. Under the topic State Medicine will be found an examination of the composition and powers of the local and State boards of health; of the laws regulating the practice of medicine, dentistry, pharmacy and embalming; and of the method of preventing and suppressing the diseases of animals. The chapter dealing with taxation presents for consideration the conditions which prevailed when no centralization existed; the evolution of a method of equalization by local and State officers; the development of a centralized system of assessing corporations; and the absence of a central control over local finances. Under the head of Police will be treated the establishment of the metropolitan police boards; the differentiation of the police power; and the creation of special expert officers, charged with the protection of the life and health of persons in certain occupations, and the pecuniary interests of the people in general. The final chapter offers some generalizations which seem to the writer to be sustained by the facts presented in the preceding chapters.

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CHAPTER II

PUBLIC EDUCATION

I. The Common Schools

1. THE ABSENCE OF A SCHOOL SYSTEM DURING THE TERRITORIAL PERIOD

THE provision of the Ordinance of 1785 already mentioned,[1] reserving the sixteenth lot or section in every township for the maintenance of the public schools within the township, was the basis of the early legislation respecting schools. The Ordinance of 1787 which soon followed this, declared that "religion, morality and knowledge being necessary to the good government and the happiness of mankind," schools and the means of education should be forever encouraged. But during the territorial period such encouragement was scant indeed. What little legislation there was in respect to common schools had reference solely to the care or protection of this estate.

In 1799 an act prohibiting the cutting of timber on lands reserved for the use and support of schools or of religion, gave authority to overseers of the poor to institute proceedings against trespassers.[2] This was the beginning of that very extensive control over school affairs which is exercised by the township trustee to this day. In 1808, six years before the lands were actually granted to the State for the use of the townships, the Legislature of Indiana Territory established a provisional leasing system under the adminis-

[1] See page 18 above.

[2] Chase, i, p. 221.

tration of the court of common pleas in each county.[1] Two years later these courts were empowered to appoint a "trustee of school lands" for each township, whose duty it was to lease the lands under such restrictions as the court might impose.[2] Though the Territorial Assemblies were urged to make provision for this vital interest they did nothing of a practical nature prior to 1816. The important matter of education was left to the few schools which had been established under private control.[3]

The regard in which the people held public education must not be estimated from the meagre legislation of this period. They appreciated the advantages and the importance of the public schools; but they felt that this laudable desire for higher things must for a time remain ungratified, while more pressing needs were demanding their thought, their energy, their strength and their resources. The settlers almost universally were poor and widely scattered. The struggle for existence was fierce and unceasing. Forests had to be cleared away; swamps, drained; roads and bridges, built; lands, tilled; and all this amid the ever-present dangers and difficulties incident to frontier life. Small wonder, then, that during the first thirty years of her history as a Territory and State, nothing deserving the name of a "public school system" existed in Indiana. The spirit and the ideals of the pioneers must be sought not in the statutes but in the Constitution. Somehow in that period of struggle and hardship and disappointment, in the minds of the practical and hard-headed pioneer leaders, there had arisen the ideal of a free school system, based upon the principles of uniformity and State support. These principles were embodied in the Constitution of 1816. It was made

[1] *Terr. Laws*, 1808, p. 36.

[2] *Terr. Laws*, 1810, p. 46.

[3] Boone, R. G., *History of Education in Indiana*, p. 21–2.

the duty of the General Assembly "to provide by law, for a general system of education, ascending in a regular gradation from township schools to a State University, wherein tuition shall be gratis and equally open to all."[1]

2. THE STRUGGLE TO ESTABLISH A TOWNSHIP SYSTEM

The tendency towards State centralization in the administration of schools has been attended by a similar movement in the direction of local centralization. A review of the struggle to supplant the "district system" with the "township system" will, in part, explain the conditions which determined the educational life of the State, and will thu contribute to a better understanding of the difficulties which impeded progress for half a century.

The division of the land into townships by the congressional survey and the reservation of the sixteenth section of each township for the use of the inhabitants thereof, for school purposes, betokened, before any statute to that effect, that the township would be the natural unit of the school system. The earliest State laws in respect to schools and school lands recognized this natural division.[2] An act of 1816 authorized the election, upon the petition of twenty house-holders, of three trustees in each congressional township who were declared to be a "body corporate in deed and fact" with full power to make by-laws or regulations for the encouragement and support of the schools in the township.[3]

The law of 1824[4]—the first serious attempt to establish a public school system—provided for the incorporation of congressional townships,[5] and vested in the corporations the

[1] *Constitution of* 1816, article ix, section 2.

[2] *Laws, Sess.*, 1816–17, pp. 104–6; 1818–9, pp. 57–9; 1827–8, p. 112.

[3] *Ibid.*, 1816–7, pp. 104–6.

[4] *Revised Statutes*, 1824, pp. 379–385.

[5] As in 1816.

reserved school lands with certain limitations as to their lease and sale. It then proceeded to give the trustees authority to divide the township into school districts, and to appoint three sub-trustees in each district. These officials were accountable to the township trustees for any malconduct in the discharge of their duties; they were subject to dismissal from office after a hearing, and were also liable to prosecution.

Here was the inauguration of the "district system," an arrangement which left to small territorial areas, thinly inhabited, the control and management of their school affairs. The inhabitants of the district determined whether or not they should have any school at all, the site of the school house, the length of the term (in case it exceeded three months) and the method of payment of the tax. No county, township or district officer had any authority to regulate the use of text-books, the course of study, or the methods of discipline and instruction. The districts depended upon the township trustees for three things only: the appointment of the sub-trustees, the levy of the local tuition revenue, in case such a levy was necessary, and the examination of the teachers. These powers might have been used by the trustees to secure a small degree of local centralization, which would have preserved the township unit; but they were not so utilized.

At that time the educational outlook was not bright. There were only 52 counties organized in the State. "Few townships were officered, and fewer yet maintained schools;" and in these tuition was not always free. The terms seldom exceeded the minimum of three months. The school revenues were totally inadequate "both from the neglect of the lands and mismanagement of the funds."[1] "With the ex-

[1] Boone, *op cit.*, p. 26.

ception of county seminaries[1] deriving some aid from the penal code and the township rents accruing to the State University, there exists no active fund for education to which resort could be had; and the pittance of rent from some sixteenth sections is entirely inadequate to effect the object at this time."[2]

The explanation of the substitution of the district for the township as the unit of the school system must be sought in the physical environment of the people, and in their preconceived ideas of local self-government. It is probable that the location of the "sixteenth section" had almost no influence in determining the place of settlement of families or colonies immigrating to the State. At least a careful examination of a map of the State does not show that the villages, towns or cities are located more frequently in the vicinity of the school section than in any other section. Other considerations more potent, if not more worthy, guided the settlers in the choice of lands and in the location of villages. Chief of these were nearness to water-courses and water-sources, productiveness of the land (considering their means of cultivation), protection against the attacks of the Indians, and the relationships or friendships with earlier pioneers. Communities were often far apart, and this isolation was still further aggravated by the insufficient means of communication and transportation. In 1820 the total population was less than 150,000; and in three-fourths of the State it averaged less than two to the square mile. The area of a congressional township was thirty-six square miles. In order to have had a meeting of the inhabitants for school purposes,

[1] The establishment of county seminaries was authorized in 1824. These schools were intended to furnish secondary instruction; but in fact, generally included in their course of study the elementary branches as well. *Rev. Stat.*, 1824, pp. 116–120.

[2] *Report of Senate Committee on Education*, *Sen. Jour.*, 1825–1826, p. 104.

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perhaps one-half of them would have found it necessary to travel over almost impassable roads a distance of four or five miles. A single school for all the children of the township was an impossibility. Neighborhoods were often jealous and even bitter in their feelings towards one another. With these obstacles to township unity it seemed but natural to provide schools for the separate neighborhoods as the people of those districts wished.

In addition to these local considerations there was a deep-seated conviction of the sacredness of local self-government. During the Colonial and Revolutionary periods there had developed in America an extreme type of particularism. When the pioneers crossed the Alleghenies and settled in the Mississippi Valley, they carried with them their particularistic ideas. In this sparsely settled region, in self-reliant communities, their individualism had an opportunity for almost unchecked growth. The isolated condition, the dependence upon self-help in a multitude of activities, the self-sufficiency of the separate localities, all stimulated in the individual the ideas of equality and self-assurance; and in the community an unshaken confidence in a localized administration of all civil affairs.[1] In the matters of education, each citizen claimed the right to give his children the kind and the degree of education which he deemed sufficient, and the district insisted upon the same right, irrespective of the larger interests and welfare of the township, county or state. During the next decade the idea of local self-government was carried still further.

In 1833 the slight connection[2] existing between the district and township was severed. The office of sub-trustee

[1] Compare Professor F. J. Turner's *The Significance of the Frontier in American History*, in Annual Report of the American Historical Association for 1893, especially pages 216, 221–3, 226–8.

[2] See page 29 above.

was abolished. Three trustees for each school district were to be elected annually thereafter by the qualified voters of the district. They were no longer removable from office by the township trustees, but by the vote of a majority of the patrons in the district. The inhabitants of any district decided whether or not to maintain a school, and determined the amount and character of the tax for building purposes and the proportion each should pay, taking into "consideration the number of each person's children to be educated, and other equitable circumstances." After the school house was once erected and paid for, no person was liable for school taxes "unless he intends to or does participate in the benefit of the school fund." Any one was allowed to send children to such a school free from any other tax than his just proportion of the labor and money necessary to repair or rebuild the school house, "he fulfilling his own contract with the teacher for tuition, fuel and contingencies as in other cases." The district treasurer was required to credit each inhabitant of the district his due proportion of school moneys, based upon the number of days of attendance of his children, and to pay over the said funds "to the teacher to be applied in due proportion to the discharge of the debt due for tuition from each person entitled to the benefit of such funds, if a contract to that effect should have been made by such teacher with the inhabitants or with the district trustees."[1] A show of financial supervision was made in the requirement that the books, papers and accounts of the school commissioner, or of the trustees or treasurer of any district or township, should be subject to the inspection of the board of county commissioners. This local control

[1] In case the district trustee, in the absence of any directions by the district meeting, had contracted that the patrons should pay the teacher a gross sum per month or year, the amount charged against any inhabitant was in the same ratio to the total salary as the aggregate tuition imparted to the pupils sent by him bore to the aggregate tuition of all the pupils sent to the school.

was neutralized by the ludicrous proviso that three days' notice should be given, by process issued by the clerk of the board on the petition of five freeholders or householders of the district, township or county.[1] This deprived the county commissioners of all power to initiate investigations and gave opportunity to conceal frauds.

The extent to which the theory of decentralization was carried can be inferred from the fact that schools established by religious denominations and by private associations were considered district schools, and were entitled by law to a share of the school revenues and to all other privileges of public schools.[2]

In 1836 and 1837 it was made lawful for any householder to employ a "qualified and certificated" teacher to instruct his children and the children of others of the district who might wish to join with him, upon such contract as he could make; provided the inhabitants should fail to elect district trustees, or the trustees should neglect to take the sense of the district on the question of the maintenance of a school. And any person so supplying a teacher was entitled to his proportion of the revenue of the township.[3] There were many schools of this kind.[4]

It would seem possible to go no further in the matter of decentralization unless the requirement of a teacher's certificate should be abolished. Indeed, we find that in 1841 this was left to the option of the district trustees.[5] But the same year showed a slight reaction from this extreme individualism. All the property within the district was made subject to any tax imposed for building school houses. A

[1] *Laws, Sess.* 1832–3, pp. 89, 93, 94, 96–100.

[2] *Laws, Sess.* 1833–4, pp. 327–9; *Spec. Laws, Sess.*, 1834–5, pp. 122–4; *Laws, Sess.* 1840–1, p. 85; *Ibid.*, 1848–9, p. 130.

[3] *Laws*, 1835–6, pp. 78–80; 1836–7, p. 39.

[4] Boone, *op cit.*, p. 34.

[5] *Laws*, 1840–1, p. 86.

closer supervision of school funds was provided and the township treasurer was required to distribute the revenue of his township among the districts in proportion to the number of children between the ages of five and twenty-one years.[1]

The legitimate fruits of this ill-conceived system of district schools were shown to be: (1) inequality in the length of the school terms, in the efficiency of schools, and in the cost of the maintenance of schools within the same township; (2) a greater expensiveness, because of the multiplicity of officers and the continuance of small schools; (3) incompetency of teachers, because of frequent changes and partiality and favoritism in their selection; (4) inefficiency in instruction, because of diversity of text-books and difficulty in grading and classifying pupils; (5) laxity in the enforcement of school laws, because of the absence of supervision and the ignorance and indifference of the petty school officers; (6) wasteful administration of public school funds and revenues; (7) neighborhood quarrels over the sites of buildings and boundaries of districts; (8) narrow and selfish views as to the ends of public instruction.[2] All this was the outgrowth of an exaggerated idea of the virtues of local self-government.

During the seven years prior to 1843, the unfavorable

[1] *Laws*, 1840–1, pp. 53, 72, 81.

[2] Compare Boone, *op cit.*, p. 148. In 1840 the House Committee on Education in an elaborate report on the subject of schools, declared that the existing plan "scarce deserves the name of system." "It is a multitude of systems, having no accountability to each other, or to any higher powers." "We present almost the only example of a state professing to have in force a system of common school education, which does not know the amount or condition of its school funds, the number of schools and scholars to be taught and to receive a distribution of those funds." *House Journal*, 1839–40, p. 365. Governor Bigger in his message in 1842 declared: "Our schools are a mass of complicated statutory provisions, presenting difficulties even to the disciplined legal mind, which are almost insuperable to the ordinary citizen." *Doc. Journ.*, 1841–2, *House Rep'ts.* p. 148.

condition of school affairs received most serious consideration by the leading educators and statesmen. It is evident from the speeches and addresses of prominent men and from the reports of officers and legislative committees that the most intelligent opinion was in favor of some attempt at a centralized system.[1] The revelations made by these utterances finally moved the legislators to action. We find in the revised school law of 1843 an important step towards an intelligent supervision under State authority. The Treasurer of the State was declared by law[2] to be the Superintendent of Common Schools. His duties were chiefly financial and statistical. No authority to direct the educational policy was given him. However, the first thing necessary to develop a satisfactory school system was to secure full, reliable and accurate information as to funds, revenues, schools and children of school age. A beginning in this direction was made by this act.

This material advance towards centralization was attended by a considerable degree of local centralization. In the absence of instructions by the district meeting, the district trustee was empowered to contract with a teacher. He also was given authority to determine what branches should be taught. Taxes levied by the district meeting were thereafter to be assessed and collected by county officers and not by district officers. Much more important was the requirement that any such tax should be assessed upon all the taxable property of the district, except that of negroes and mulattoes who were not entitled to the privileges of the schools.[3]

Pursuant to the recommendation of the General Assembly at its thirty-first session a "Convention of the Friends of

[1] See pages 42–44, 63, 74–76 below.

[2] *Rev. Stat.*, 1843, pp. 324–5.

[3] *Rev. Stat.*, 1843, pp. 313–315, 322–324.

the Common Schools" met at Indianapolis May 26, 1847. Its committees drafted a bill to provide for the improvement of common schools and an address to the people.[1] The report accompanying the bill was very exhaustive in its review of the situation of the schools and school funds. In the address to the people it was stated that in 1847 one-seventh of the people over twenty years of age could neither read nor write; that 30,000 voters in Indiana were illiterate; and that the annual expenditure for education was only about $125,000.[2] The only important act of the General Assembly at this time was a law submitting to a popular vote the question of the support of the common schools by general taxation.[3] The result of the vote was in favor of State–established, State–supported and State–controlled schools.

The Legislature soon afterwards proceeded to enact a law which gave greater security to school funds and greater accuracy to reports, inaugurated the policy of State support of the schools by means of general taxation, and strengthened the local centralization. The number of trustees in each district was reduced from three to one. Besides attending to the business of the district, the trustee was made "the organ of communication between the district and the board of township trustees" to whom he was expected to make "such suggestions as may advance the educational interests of his district." In addition, he was required to make reports to the clerk of the township board. Acceptance of the offices of township and district trustees was made obligatory. The township was made the unit for the distribution of the school funds. The township trustees were required to provide a sufficient number of schools to accommodate the pupils of their townships for at least three

[1] *Doc. Journ.*, 1847–8, Pt. ii, pp. 141 ff.

[2] *Ibid.*, pp. 170, 173, 182–3.

[3] *Laws*, 1847–8, p. 48.

months annually. All schools of the township were to have school terms of equal length. Schools established by private liberality were still entitled to their just and equitable allowance from the public funds.[1] The worst defect of the law was the proviso that left it to each county to determine whether or not the law should operate within its jurisdiction. At the first election following its enactment, the law was adopted in fifty-four counties.

The definitive step in this tedious transition from the district to the township system was taken in 1852.[2] This law was mandatory in character and applied to every county and every district. A uniform system of administration was created for civil townships, and the political functions were taken away from the congressional townships. Each civil township was declared to be a township for school purposes, and the township officers, to be school officers.[2] The three trustees[3] had power to manage the schools and school lands in nearly the same way as at present.[4] Incorporated cities and towns were for the first time made school corporations independent of the townships in which they were situated. They were declared to be entitled to their proportionate share of school funds, and given power to establish graded schools. All school corporations were empowered to levy taxes for building purposes and for the support of schools after the public funds were exhausted.[5]

There was a slight reaction towards a recognition of the

[1] *Laws*, 1848–9. pp. 125–128, 130.

[2] *Rev. Stat.*, 1852, i, p. 440. In 1855 the county commissioners were instructed to make the boundaries of the civil townships coincide as nearly as possible with those of the congressional townships. This simplified the distribution of the revenue from the congressional township fund. *Laws*, 1855, p. 181.

[3] Under the law of 1859 one trustee was elected in each township. *Laws*, 1859, p. 220.

[4] See below, ch. i, sec. 5.

[5] *Rev. Stat.*, 1852, i, pp. 444, 454.

district system in 1855. The patrons of a school were authorized to hold an annual meeting at which they might elect a school director with slight authority. The school meeting was given considerable power in respect to the designation and dismissal of teachers, the determination of the course of study, *et cetera*.[1] This change was made in the hope that it would reconcile the friends of the old system and harmonize their views and predilections with the new principles. But it proved to be a division of local authority which led to frequent conflicts between the township trustees and the directors of the districts.[2]

In response to the official protests against this evil, the Legislature in 1865 gave school trustees power to employ teachers without considering the wishes of patrons.[3] In order to protect the people against any unfair and arbitrary action on the part of the trustee, he was in 1883 forbidden to employ any teacher against whom a majority of the patrons might formally protest and was required to dismiss a teacher upon their petition.[4]

The latest phase of this centralizing tendency in local school administration is seen in the disposition to abandon the weaker school districts and provide transportation for the pupils to larger schools. In the year 1899–1900 there were within the State 108 schools having fewer than five pupils, and 487 schools having between five and ten pupils, in average daily attendance.[5] The cost of collecting the pupils into larger schools would be much less than the cost

[1] *Laws*, 1855, pp. 176–7.

[2] A large percentage of the difficulties reported to the State Superintendent's office for settlement arose from attempts to designate teachers. *Bien. Report State Supt. Pub. Instr.* for 1863–4, p. 58.

[3] *Laws, Reg. Sess.*, 1865, p. 6; see also *Laws*, 1873, p. 68.

[4] *Laws*, 1883, p. 31.

[5] *Bien. Report State Supt. Jones* for 1899–1900, p. 524.

of instruction in the small schools. Already the experiment has been made in forty of the ninety-two counties with satisfactory results.[1] The abandonment of the weaker schools has been given a new legal sanction by recent legislation. The township trustee may upon his own authority abandon any school that has "an average daily attendance of twelve pupils or fewer," and consolidate the schools with those of an adjacent district. With the written consent of a majority of the voters of any school district he may, and upon their petition he must, take such action.[2] While these laws do not explicitly authorize trustees to expend revenue for the transportation of pupils, a recent official opinion of the State Superintendent declares that they have that power. The stronger arguments seem to be in favor of consolidation.[3] This movement emphasizes with force the contrast between the doctrines that prevailed seventy years ago and those of the present.

It has been said that Indiana was "the first State in the Union to incorporate it [the township system] into her educational code." However that may be, it was certainly an innovation of the greatest import. Gradually it came to mean the diminution of the expenses of administration, the equalization of opportunities within the township, the employment of more competent teachers with longer tenure, and greater professional interest and ambition. In the place of narrow localized interests and neighborhood quarrels and factions, it led to the expansion of interest, sympathy and civic pride so as to include the civil and educational welfare of each citizen of the larger community.

[1] *Bien. Report State Supt. Jones for* 1899–1900, pp. 529–557.

[2] *Laws*, 1901, pp. 159, 437.

[3] *Bien. Report State Supt. Jones* for 1899 and 1900, pp. 526–8.

3. STATE AID AND CENTRAL CONTROL

In a more detailed examination of the centralizing tendency in school administration, the development of central control over school finances occupies an important place. It would seem to be a general principle that where an individual or a corporation, public or private, stands sponsor for an enterprise by furnishing periodically the means for its prosecution, some accountability to the promoters would be required. The grantor or benefactor wishes to know that the funds are wisely and economically expended for the particular purpose in view. It will be seen from the following pages that just as the State's financial interest in the schools increased, that is, just as it assumed, by means of general taxation or otherwise, the burdens of maintaining the system, so its control over the expenditures, reports and instruction increased.

The school revenues were derived from several sources: permanent funds, local and general taxation, fines, forfeitures, *et cetera*. Until consolidation was effected, in 1852, there was considerable difference in the objects of the expenditure and in the administration of the various funds. A clearer view of the subject may be obtained, therefore, by treating them separately.

I. *The Congressional Township Fund.* The first governmental endowment of the public schools in Indiana came from the Congress of the Confederation.[1] By the act enabling the people of Indiana Territory to form a Constitution and to organize a State government, the "sixteenth section" of land was again conditionally granted to the inhabitants of each township for the use of schools.[2] The condition was accepted by the State, and the Constitution adopted in 1816 required the

[1] *Journal of Congress*, ix, p. 171. See also p. 18.

[2] *U. S. Statutes*, iii, p. 290.

General Assembly "to provide by law for the improvement of the lands and to apply any funds which might be raised from them or from any other quarter to the accomplishment of the grand object for which they are intended."[1] The proceeds arising from the sale of such lands or otherwise obtained for school purposes, were to "remain a fund for the exclusive purpose of promoting the interest of literature and the sciences, and for the support of seminaries and public schools."[2] The interpretation which was given to this language by the executive and judicial officers of the State government seems reasonable. It was held that this land had been granted to the inhabitants of each township for school purposes, and that the State control over the funds arising therefrom extended only to their protection and administration.[3] While under this construction there was a ground for the exercise of State supervision to a certain extent, there was apparent justification of that deference which Legislatures continually showed towards local sentiment.

Prior to 1843 there were tried three methods of managing school lands and the funds derived from them. During part of this time all three methods were in operation, and the choice of the plan was in each case left to the voters of the congressional township. At first the lands were put in charge of a "superintendent of school lands" or (in case of incorporation[4]) of trustees in each congressional township.[5] The second method gave to the inhabitants of a congressional township the privilege of selling their lands[6] and

[1] *Constitution*, 1816, art. ix, sect. 1, and *Ordinance of 1816*.

[2] *Constitution of 1816*, art. ix, sect. 1.

[3] 6 *Indiana Reports*, pp. 87, 96.

[4] See page 28 above.

[5] *Laws*, 1816–7, pp. 104, 106; 1818–9, pp. 57–9; *Rev. Stat.*, 1824, 379.

[6] *Laws*, 1826–7, p. 103; 1827–8, p. 112, and *U. S. Statutes*, iv, p. 558.

entrusting the proceeds to a "county school commissioner" elected by the people.[1] It was his duty to loan the money on proper security, and to distribute to each township the income from its own funds. He had no control over the school funds of any township which declined to sell its lands. This seemed to be a step towards local centralization. The opportunity to dispose of the lands was quickly seized, and by 1843 more than a million dollars was thus realized. While this policy provided funds for immediate use, it must be regarded as extremely short-sighted. Most of this land was sold at $1.25 per acre. If it had been carefully husbanded, it would now in many townships furnish annual revenue sufficient to maintain schools for ten months without one cent of local taxation for tuition purposes.[2]

The third experiment was made in 1831. The electors of the township were empowered to determine by vote whether or not the money derived from the sale of school lands should be loaned by the school commissioner or be deposited in the State loan office.[3] The money placed in the loan office was to constitute "a perpetual fund, set apart for the purpose of township free schools;" and the faith of the State was solemnly pledged to the regular annual payment of interest at six per cent. to the township properly entitled to receive it. The school commissioner was still required to loan school moneys not deposited in the loan office.[4] This step towards State centralization was neutralized by granting each township the right to retain or to recall[5] the

[1] *Laws*, 1828–9, pp. 12–18, 122–3; 1829–30, p. 150.

[2] See illustration of this fact in Supt. D. M. Greeting's *Report* for 1895 and 1896, pp. 293–5.

[3] *Rev. Stat.*, 1831, p. 468. The loan office under the superintendence of the State Treasurer had been created in 1828 for the purpose of loaning the funds of the Indiana College. *Laws*, 1827–8, pp. 127–130.

[4] *Rev. Stat.*, 1831, p. 468.

[5] *Laws*, 1840–1, pp. 146–7.

money if the voters preferred to do so. In fact, little advantage was taken of this privilege, and the total amount on deposit with the Treasurer of State from 1831 to 1851 never at any one time exceeded $2,000.[1]

It has already been stated that from 1837 there was a growing conviction that a greater degree of centralization was absolutely necessary to secure any development of the school system. Messages of governors[2] and reports of officers[3] and legislative committees[4] during the next five years, contained many urgent appeals for a thorough investigation of the school funds and for the establishment of the office of State Superintendent.

As early as 1819 there had been required of the local financial officers some sort of accountability to the boards charged with the county business. But this control was neither exacting nor efficient. In reference to the subject of education, Governor Bigger declared in his message of December, 1841, that it was almost impossible to ascertain the amount or the condition of the funds appropriated for the benefit of common schools. "This condition," he says, "points to the propriety of appointing some suitable agent or agents to examine into and report the general condition of the school funds of the State."[5] The Legislature at that session did not respond heartily to this sensible suggestion. But the Auditor of State was so deeply interested in the matter that he proceeded upon his own responsibility to

[1] *Rep't Treas.*, 1835, *Sen. Journ.*, 1835–6, p. 57; *Rep'ts of Auditor*, 1844, *Doc. Journ.*, 1844–5, Pt. i, p. 48; *Ibid.*, 1855–6, Pt. i, p. 286.

[2] *House Journ.*, 1839–40, p. 26, and *Doc. Journ.*, 1840–1, *House Reports*, p. 115; *Doc. Journ.*, 1841–2, *House Reports*, p. 148.

[3] *Report of Auditor*, 1842, *Doc. Journ.*, 1842–3, *House Rep'ts*, pp. 89–93.

[4] *House Journ.*, 1838–9, pp. 414 to 427; *Ibid.*, 1839–40, p. 393: *Doc. Journ.*, 1840–1, *House Rep'ts*, pp. 513–17.

[5] *Doc. Journ.*, 1841–2, *House Rep'ts*, pp. 85–6.

address circulars to the various county auditors, with a view to the collection of information which would enable the Executive to show the Legislature the necessity of giving the subject a more thorough consideration. Answers were received from fifty-eight counties which were in many instances quite defective. The delays in the twenty-nine remaining counties were attributed to the sickness of county commissioners, to the want of commissioners' reports, or to the impossibility of obtaining the required information from the books of commissioners.[1]

The evidence submitted by him was so convincing of the need of stricter supervision that the Legislature of 1843 was induced to take an important step towards the realization of a central control. The office of Superintendent of Common Schools was created, the duties of which were to be performed by the Treasurer of State. He was required to submit to the General Assembly an annual report containing: (1) statements concerning the condition and amount of the school funds, the property of the State University and other incorporated colleges and academies in the State, and the county seminaries and common schools, both public and private; (2) estimates and accounts of expenditures of the public school moneys; (3) plans for the management and improvement of the common school fund and for the better

[1] The auditor estimated the missing counties at an average of the other counties, and reported the following facts:

Average amount of revenue received by each pupil attending	$0 84
The total value of all school funds	2,254,597 00
The amount of interest from the different sources which should be paid out annually	146,298 00
The amount actually disbursed	94,436 00
Deficit in the annual disbursements unaccounted for	51,862 00

He declared that the actual loss could not be known until a change in the system was effected. *Report of Auditor*, 1842, *Doc. Journ.*, 1842–3, *House Rep'ts*, pp. 89–93.

organization of the common schools; and (4) all matters relating to the cause of education which he should deem expedient to communicate. He was empowered to exact of all school officers copies of all reports required to be made by them; and to call for other information in relation to their duties respecting the school funds, property and the management of schools and seminaries, as he might deem important He was authorized to prepare forms and regulations for reports and to issue instructions for the better organization and government of common schools and county seminaries.[1] The security of the surplus revenue fund and the congressional township fund was more carefully guarded, and the accountability of officers charged with their management was more effectively secured. The loaning of these funds was entrusted to the county auditors. The several counties were declared liable for the preservation of the funds and the payment of the annual interest at the rate established by law. The county board of each county was required to examine annually the accounts and proceedings of the county auditor and treasurer, and to report the result of the examination to the Auditor of State and the Superintennent of Schools.[2]

The progress towards uniformity and centralization desired to be secured by these provisions was obstructed by the special laws regulating the management of school moneys, which were enacted for seventeen different counties during the period from 1843 to 1851.[3] These special acts were most pernicious. They not only exempted localities from the operation of general laws; but they protected delinquent

[1] *Rev. Stat.*, 1843, pp. 324–5.

[2] *Rev. Stat.*, 1843, pp. 251–5.

[3] *Laws*, 1843–4, pp. 66, 67; 1845–6, p. 102; 1849–50, p. 194; 1850–1, pp. 60, 165; *Local Laws*, 1844–5, pp. 61, 117; *Special Laws*, 1846–7, pp. 91, 381; 1847–8, pp. 256, 460.

or peculating officials by relieving them and their securities of any liability, and forbidding the courts to take jurisdiction in any suit instituted against them. "The General Assembly seemed to act on the principle that the people of the counties, being ultimately responsible themselves, had a perfect right to determine this matter."[1] In the face of such a sentiment it may readily be inferred that the operation of the laws was unsatisfactory. In 1843 the Auditor stated that no reports showing the amount of school funds derived from the surplus revenue and the school sections and the amount of interest accruing therefrom, had been received for that year from twenty-three out of eighty-seven counties.[2]. However, the information which was obtained demonstrated the utter carelessness, not to say fraud, with which this fund was managed.[3]

In his first annual report the Superintendent of Common

[1] *Debates of Constitutional Convention*, 1850–1, vol. ii, pp. 1881–2; *Local Laws*, 1851, pp. 41–2.

[2] *Report of Auditor*, *Doc. Journ.*, 1843–4, *House Rep't's*, p. 138.

[3] One county auditor says: "To get at that kind of a statement.....is a matter of impossibility, because the accounts of each agent and each year are mixed and entangled so that they cannot be distinguished one from another. The whole matter of accounts from beginning to end is a complete mass of unintelligible complication." Another says: "There can be but little doubt with regard to the bad management of this fund until within a few years..... We can rely only on the reports.....for the last two or three years." Another regrets that the "second school commissioner kept no account current; the books show the amount he received, but neither the books nor reports show what he paid out. I have searched the papers diligently for receipts, but cannot find them." Another, after examining the books and papers of the school commissioner, was "at a loss to know what to do with them." Another complains that "the books of this fund [congressional township] are in a very bad condition." Still another declares that "the school commissioner has made no report to the county board (so far as I can ascertain) since 1838..... The fund is loosely managed." Another states that "the accounts of the two first commissioners were a chaotic mass; sales of land, rents, interest, loans made and loans refunded, and payments to township trustees, being all mixed up together." *Rep't of Auditor*, *Doc. Journ.*, 1843–4, *House Rep't's*, pp. 142, 152, 185, 199, 227, 230, 246.

Schools deplored the meagerness of his statistics. He reported the total school fund of the State at $2,017,764, of which $31,592 are set down as "doubtful," and $22,300 as "lost." He feared that further returns would largely increase the items of "lost" and "doubtful" debts.[1]

The very incompleteness of the returns which local officials were required to make to the Superintendent of Common Schools was in one sense satisfactory to the advocates of centralization; because it was convincing evidence of the inefficiency and wastefulness of the administration of school finances; and it proved beyond cavil the prime necessity of strict central control over the whole subject of school affairs. The State Treasurer repeatedly urged the propriety of committing such duties to an officer having no other functions.

The law of 1849, imposing a general tax for school purpurposes, abolished the office of school commissioner in any county which adopted[2] the law, transferred his fiscal duties to the county auditor and established a stricter system of reports.[3]

The constitution of 1851 created the office of State Superintendent of Public Instruction and provided for the consolidation of all of the school funds into one "Common School Fund." The principal was to remain a perpetual fund, which might be increased, but should never be diminished; and the income should be inviolably appropriated to the support of common schools, and to no other purpose whatever. Provision was made for the investment

[1] *Rep't Sup't Com. Schools for 1843*, *Doc. Journ.*, 1843–4, *House Rep'ts*, pp. 329–30. In his reports for 1845 and 1846 he again spoke of "the scanty information" reported to his office. *Ibid.*, 1845–6, Pt. ii, pp. 103–5; 1846–7, Pt. ii, pp. 122–130.

[2] See pages 37 and 66 below.

[3] *Laws*, 1848–9, p. 129, and sects. 18, 19, 23.

by the General Assembly of the portion not distributed to the counties; and the several counties were declared liable for the preservation of that part entrusted to them, and for the payment of the annual interest thereon. All trust funds held by the State were declared inviolate, to be exclusively applied to the purposes for which the trust was created.[1]

The Legislature immediately abolished the office of school commissioner in all counties, and ordered the school funds to be loaned by the county auditors. The county treasurers and auditors were made subject to a stricter control by the boards of county commissioners.[2] This plan of unifying and consolidating the system was unexpectedly obstructed. The Supreme Court held that it had been the intention of the Federal Government to reserve the sixteenth section in each township for the exclusive use of the inhabitants of the township for school purposes; that this grant had been accepted by the State by a solemn ordinance of their first constitutional convention, and had been so construed by the State government and State judiciary since then; that the second constitutional convention had ordained that, "All trust funds, held by the State, shall remain inviolate, and be faithfully and exclusively applied to the purposes for which the trust was created;" and that that part of the law of 1852 consolidating this fund into the general school fund was unconstitutional and void. "The supervision exercised by the Legislature over the township fund is but an implied necessity sanctioned by Congress. It extends only to protecting and administering, not diverting, the fund."[3]

Guided by this decision, the Legislature in 1855 provided for the consolidation of all the other funds, but set the con-

[1] *Constitution*, 1851, art. viii, sects. 2, 3, 6 and 7.

[2] *Rev. Stat.*, 1852, pp. 445, 447, 448, 455.

[3] State of Ind. *et al. vs.* Springfield Township in Franklin County, 6 *Ind. Rep'ts*, pp. 87–96.

gressional township fund aside as a separate fund, the income of which was to be exclusively devoted to the support of schools in the respective townships from which the fund was derived.[1] That the law of 1852 was not popular may be readily inferred from the statements of trustees and unofficial persons[2] and from the reports of the State Superintendent of Public Instruction and the Auditor of State.[3] While the distribution of the income arising from the congressional township fund was made on a different basis, the administration of it was the same as the common school fund, and needs no further separate treatment. The total amount realized from this source is $2,467,655.[4]

The early management of this trust has been aptly described by the Supreme Court in the following language: "Under their operation [the laws prior to 1851] large sums were wasted, and some of the most valuable lands in the State sacrificed without producing any perceptible result. Every step in legislation seemed to involve the system in greater expense and difficulty, until inefficiency, confusion and waste seemed to be the legitimate offspring of our legislation on that subject." [5]

II. *The County Seminary Funds.* The ideal school system as outlined by the framers of the first Constitution contemplated a "general system of education, ascending in a regular gradation from township schools to a State University." To meet the need of secondary instruction it was intended to establish county seminaries. The Constitution, in order to further this purpose, provided that money paid for

[1] *Laws*, 1855, pp. 161 and 175–6.

[2] *Rep't Supt. Pub. Instr.*, 1853, *Doc. Journ.*, 1853, pp. 129–141.

[3] *Rep't Auditor*, 1852, *Doc. Journ.*, 1852–3, Pt. i, p. 97.

[4] This does not include 965 acres of unsold land, valued at $32,388. *Bien. Rep't State Supt. Pub. Instr.* for 1899–1900, p. 369.

[5] 5 *Ind. Rep'ts*, p. 561.

exemption from military duty on account of conscientious scruples should be applied in equal proportion to the support of county seminaries; and that all fines assessed for any breach of the penal laws should be applied to the seminaries of the county in which they should be assessed.[1] It will be seen that the former was considered a State fund and the latter a local fund. Possibly it was intended to give each community an incentive to enforce the penal laws rigidly in order to increase its local tuition revenue.

Early in 1817 laws were enacted to put these clauses into operation.[2] One year later the first act directing the management of the seminary funds was passed. The Governor was authorized to appoint in each county a "trustee of the public seminary funds," who was charged with the duty of collecting and caring for the moneys properly belonging to this fund. He was required to transmit annually to the Speaker of the House of Representatives a certified list of all receipts.[3]

This was the first step towards a central supervision over any of the school funds. A mistake was made in requiring the returns to be made to a legislative, instead of an administrative, officer. But here was, at least, an opportunity which should not have been injudiciously thrown away. This control was lessened four years later by requiring the report to be made to the board of county commissioners and to be sent by them to the Speaker.[4] These laws failed in their purpose because there was no superior executive authority to see to their strict enforcement. Large sums of money were lost or wasted, and the Legislature had no reliable information as to their amount or safety. As early as 1823,

[1] *Constitution*, 1816, art. ix, sect. 3.

[2] *Laws*, 1816–7, p. 155.

[3] *Laws*, 1817–8, pp. 355–7.

[4] *Laws*, 1821–2, p. 124.

Governor Hendricks said, "It is hazarding little to say that in many of the counties, these [Seminary] funds have not the best management."[1] The central control over this fund was further relinquished in the following year by placing the authority to appoint the seminary trustees in the hands of the several county boards. Each trustee was required to exhibit annually to the county commissioners a detailed account of the seminary funds; but the report to the Speaker of the House was discontinued. Failure or refusal to report to the county board was declared a vacation of the office. At the same time it was made lawful, if the electors so desired,[2] to choose one trustee from each township of the county. These trustees formed a body corporate and possessed all the powers of the former seminary trustee whom they superseded. They reported to the Circuit Court of the county, which had power to inquire into the management of the funds and to dispose of them as they deemed best. The trustees and their securities were made responsible for any negligent or corrupt waste of the funds.[3] The prosecuting attorneys were, in 1825, required[4] to examine into the situation of the seminary funds and to require officers to account for all moneys which might appear to come into their hands. The prosecuting attorneys were to lay an exhibit of the fund before the Circuit Court; the clerk of the court was required to send a copy of the exhibit to the Speaker of the House of Representatives. The authority of the Circuit Court over this fund was increased in 1831. It was given power to remove any trustee for willful and corrupt official misconduct, and upon the application of the county board to pass any or-

[1] *Message of Governor, House Journ.*, 1823–4, pp. 15–16.

[2] In 1831 it was provided that electors could not avail themselves of this privilege until this fund amounted to $400. *Rev. Stat.*, 1831, p. 489.

[3] *Rev. Stat.*, 1824, pp. 116–120.

[4] *Laws*, 1825, pp. 96–7.

ders for the correct disposition of all funds and effects of the seminary of the county as their discretion should direct.[1]

Many special laws were enacted during this period, providing various methods of appointing seminary trustees.[2] By this time there existed on the statute books a complicated system of responsibility and control which was in practice no control at all. The provisions did not give the funds the needed security. We find the Governor, in 1834, saying: "In some instances they are entirely squandered and lost. It is believed at present they are more generally paid over than formerly to the trustees, but there still seems to be some strange fatality attending them."[3] He recommended abolishing the office of seminary trustee.

A still greater degree of decentralization was reached in 1833, when it was provided that the "conscience money" might be applied to the support of the common schools, if the person paying so desired. And it may be inferred from the Auditor's report that subsequently most of this money was so expended.[4]

In 1841, the Governor urged that some plan be adopted by which the amount and the management of the county seminary fund might be annually reported to the Legislature.[5]

When the office of Superintendent of Common Schools was created in 1843, some supervision of the affairs of county seminaries was provided, by requiring copies of abstracts of all accounts and statements to be forwarded annually to the county auditor and to the Superintendent of Common

[1] *Rev. Stat.*, 1831, pp. 495.

[2] *Laws*, 1831–4, pp. 90–2; 1832–3, pp. 137–9; *Rev. Stat.*, 1838, p. 155.

[3] *Message of Governor Noble*, *House Journ.*, 1834–5, p. 19.

[4] The amount of the militia fine was only one dollar per year, and the sum derived from this source and paid into the State treasury from 1825 to 1847 amounted only to $634.65. *Rep't of Auditor*, *Doc. Journ.*, 1847–8, Pt. i, p. 57.

[5] *Message of Governor*, 1841, *Doc. Journ.*, 1841–2, *House Rep'ts*, pp. 85–6.

Schools, for the use and inspection of the Legislature.[1] Clerks and justices of the peace were required to make reports of fines to the county board at the close of each term of court. The sums collected were to be paid over to the county treasurer at the time and to be loaned by the county auditor, who was responsible for them.[2] If this source had been properly protected, it would have yielded a generous revenue. But the fines assessed were either remitted by the Governor or, more probably, never paid; at any rate, they were not turned over to the seminary trustees. The Superintendent of Common Schools stated, in 1846,[3] that only sixty of the ninety counties had reported and that these returns showed that but thirty-one counties had seminaries erected or in course of completion.

Provision was made, in 1852, for the sale of county seminaries and the transference of the proceeds to the common school fund, after deducting advances made by individuals.[4] The amount finally turned into the school fund from this source was about $100,000. The fines for breaches of the peace thereafter were added to the common school fund.

III. *The Delinquent Tax Fund.* The delinquent tax fund, while not the outcome of a well-formulated conviction that the State should support the public schools by a system of taxation, was logically closely related to that principle.

For the purpose of encouraging common schools, it was enacted, in 1832, that lands on which the taxes should remain unpaid for three years should be sold, and the money, including the taxes and the penalty, should be paid to the

[1] *Rev. Stat.*, 1843, pp. 304–5. This was the only control exercised by the State over the secondary schools. They were scarcely different from the private academies.

[2] *Rev. Stat.*, 1843, pp. 249 and 250.

[3] *Rep't Sup't Com. Schools, Doc. Journ.*, 1846–7, Pt. ii, pp. 123–6.

[4] *Constitution*, art. viii, sect. 2; and *Rev. Stat.*, 1852, i, pp. 437–8.

school commissioner, to be loaned in the same way as the congressional township fund. The school commissioner was required to certify to the Treasurer of State the amount of such lands and the sums paid within each year for their redemption and to submit his books and proceedings to the county commissioner for examination.[1]

The Treasurer reported in 1833 but twenty-two counties out of sixty-seven, from which the school commissioners had made returns relative to the delinquent land taxes.[2] There was no improvement for several years.

Although an attempt at reform was made in 1839,[3] its results did not fulfill expectations. In 1842 it was officially declared that only twenty-five counties of the eighty-seven had made any collections on the delinquent lands and lots for seven consecutive years.[4] In 1843 the proceeds arising from the sale of the lands for delinquent taxes were made part of the general revenues of the county and State.[5] By virtue of an act of 1853 they were again applied to the common school fund.[6]

The exact amount which was turned over to the school commissioners under these laws cannot be definitely ascertained. It has been estimated at from $50,000 to $75,000. The cost of management was considerable, and the remainder was not credited to the school fund, but was expended for current needs; so that the purpose for which it was designed by law was not attained.

[1] *Laws*, 1831–2,, pp. 264–5.

[2] *Rep't of Treasurer*, 1833, in *Laws*, 1833–4, p. 382. Two years later he pointed out that the looseness seemed to consist: (1) "In the neglect in some instances of collectors in making proper returns to the school commissioners; (2) in the most culpable neglect on the part of school commissioners in failing to make returns to the Treasurer of State, and (3) in the great imperfection and want of uniformity in such returns as made." *Sen. Journ.*, 1834–5, p. 140.

[3] *Laws*, 1838–9, pp. 38–40.

[4] *Report of Auditor*, 1842, p. 93.

[5] *Rev. Stat.*, 1843, pp. 219, 224.

[6] *Laws*, 1853, p. 55.

A few minor funds were created from time to time, such as money lost at gambling and recovered by law when the loser had no near relatives,[1] court fees remaining unclaimed,[2] forfeitures of recognizances,[3] escheated estates,[4] and proceeds from the sale of estrays after the payment of expenses. The amounts derived from these sources were insignificant, and no special mention of their administration is required here.

IV. *The Saline Fund.* The enabling act of Congress authorizing the formation of a State Constitution, granted to the State all the salt springs within Indiana Territory with the adjacent lands which were necessary for their working. The State Legislature was empowered to prescribe the terms, conditions and regulations of their use with the proviso, that they should never be sold nor leased for a longer period than ten years at a time.[5]

For several years the rents received from these springs and lands were turned into the general fund of the State. Congress, in 1832, granted the State authority to sell these lands on condition that the proceeds should be used for the purpose of education.[6] The receipts from the sales were paid into the State treasury and were declared to be a permanent fund, the income of which was to be devoted to the common schools.[7] The moneys were loaned by the State Treasurer, who made an annual report to the General Assembly.

Here was a fund created by the positive act of the State and designed for the use of the whole State, not of certain townships within it. Its management was, therefore, placed directly in the hands of State officers. It was allowed to

[1] *Laws*, 1816–7, p. 94.
[2] *Laws*, 1841–2, p. 131.
[3] *Laws*, 1843, p. 93.
[4] *Rev. Stat.*, 1843, p. 438.
[5] *U. S. Statutes at Large*, iii, p. 289.
[6] *Laws*, 1826–7, p. 103, and *U. S. Statutes*, iv, 558.
[7] *Laws*, 1832–3, pp. 124–129; 1833–4, pp. 324–6.

accumulate until 1845, when the Legislature ordered its distribution among the counties according to the number of taxable polls. It was to be loaned as other school funds, and the counties were made responsible for its safe keeping and for the payment of the annual interest.[1] The final sales were not made for many years, and the account was at last settled in 1873. The total amount which was turned into the permanent school fund, was about $85,000. In 1852 it was consolidated with the other funds.

V. *The Surplus Revenue Fund.* The General Assembly in 1837 set apart as a common school fund one-half[2] of the Surplus Revenue to which the State was entitled under the act of Congress of June 23, 1836.[3] This, also, was a State fund. It was a notable instance in which the representatives of the people recognized that the school system should be a State system. Although the act imposed upon the Commonwealth no burden of taxation, it was a manifestation of a laudable liberality on its part; for the State had in the previous year authorized the borrowing of $10,000,000[4] for the development of internal improvements, and the annual revenue was less than $65,000.

It is interesting to note the manner in which the State assumed the management of this fund. It was to be apportioned among the several counties in proportion to the number of taxable polls for the year 1836; and every fifth year a new apportionment was to be made on this basis. The Legislature itself was to appoint annually in each county an agent who was to be under a bond filed and recorded with

[1] *Laws*, 1844–5, pp. 60–2. See also pages 45 and 51 above.

[2] The first two quarterly installments were turned over to the school fund. The fourth installment was never paid, so that two-thirds of the amount actually paid was devoted to the cause of education.

[3] *U. S. Statutes*, v, p. 55.

[4] The State debt in 1837 amounted to $5,437,000.

the county clerk, a certificate of which was to be sent to the Treasurer of State. The agent was authorized to receive and loan the money under the restrictions and regulations prescribed by the law; and to pay the interest over to the school commissioner, to be paid by him to the several township treasurers. The agent and the school commissioner were required to make quarterly reports directly to the Treasurer of State. It was the duty of the Treasurer of State to report the same annually to the General Assembly and to commence suit against any agent who should fail to comply with the provisions of the act. In case of any such failure or refusal on the part of the agent his authority at once expired.[1]

This action seemed to indicate that as soon as the people should come to realize that the common schools were a State institution maintained by a State fund, thereupon the State would assume a stricter control over their finances and their management. The law though sound in theory proved ineffective in practice. In the first report of the Treasurer which contained a reference to this fund, we find him regretting that several of the agents having in charge the loaning of it had neglected to make their quarterly reports. He called attention to the insecurity of the fund, and showed that borrowers were deficient in the payment of interest to the amount of $3,695—about 12 per cent. of the total income from it.[2] Notwithstanding the imposition of further penalties,[3] the Treasurer reported in 1839 that only thirty out of eighty-four clerks had certified that the loaning agents had given the required bonds; and that many of them had

[1] *Laws*, 1836–7, pp. 3–5, 10.

[2] *Rep't of Treas. in relation to Surplus Revenue*, 1838, *Doc. Journ.*, 1838–9, pp. 324–5.

[3] *Laws*, 1838–9, pp. 30–1.

failed to make reports to his office.[1] In the following years there was little improvement.[2]

An act of 1841 provided that as the loans already made should be paid off, the surplus revenue fund, the college fund, the State bank school fund, and the saline fund should be gradually invested in the stock of the State Bank of Indiana. But it was left with the several boards of county commissioners to decide whether or not the surplus revenue fund should be so disposed of.[3] Only eighteen of the eighty-one counties consented to the investment of the surplus revenue fund in bank stock;[4] and only $1,413 were so invested.[5]

In the following year the power to appoint the loaning agents was transferred to the several boards of county commissioners. It was the duty of these agents to report in full semi-annually to the county auditor, who reported to the county board. The auditor if he thought the fund unsafe, or found any misconduct in the agent, was immediately to cause the county board to convene. It had power to remove the agent, and to hold him or his sureties liable for any losses to the fund. For failure to comply strictly with the law each member of the county board was liable to a fine upon conviction.[6] But the complaints concerning the management of the fund did not cease.[7]

In 1843 the counties were made liable for the preservation of this fund as well as the congressional township fund.[8] In

[1] *Doc. Journ.*, 1839–40, *House Rep'ts*, pp. 57–8.

[2] *Rep't of Treasurer*, 1840, *Doc. Journ.*, 1840–1, *House Rep'ts*, p. 9. *Ibid.*, 1841, *Doc. Journ.*, 1841–2, *House Rep'ts*, pp. 87–8.

[3] *Laws*, 1840–1, pp. 192–195.

[4] *Rep't of Treasurer*, 1841, *Doc. Journ.*, *House Rep'ts*, pp. 88, 106.

[5] *Sen. Journ.*, 1842–3, p. 155. [6] *Laws*, 1841–2, pp. 80–1.

[7] *Rep't of Auditor*, 1842, *Doc. Journ.*, 1842–3, *House Rep'ts*, pp. 89–93.

[8] *Rev. Stat.*, 1843, p. 252.

the course of several years a more satisfactory condition prevailed. In 1852 the surplus revenue fund was one of the items which made up the consolidated school fund. The total amount realized from this source was $567,126.16.

It must, in fairness, be admitted that, upon first appearance, this illustration of financial management under the supervision of the State does not convince one of the superiority of this system over the decentralized local control. But there were several serious defects in the methods tried. There was no power of personal visitation given the State officer. Judicial process was necessary to recover funds or damages from delinquent or corrupt officials, and it was difficult to secure conviction because of personal attachments. There was, until 1843, no liability imposed upon the county as a corporation, holding it responsible for all losses occurring to the school funds. Last and most important, the power of appointing the local officers was misplaced. Instead of intrusting it to a single administrative officer who was responsible for the safe-keeping of the fund, it was granted in the first law to the Legislature, and in a later law to the county commissioners. The appointment of so large a body of local officials by the Legislature meant practically that each member designated the agent or agents within his district. Such appointments, with few exceptions, were made not because of ability and integrity, but on account of personal or party relations. Not much improvement was made when this authority was given to the county commissioners.

VI. *The Bank Tax Fund and the Sinking Fund.* In 1834 the State Bank of Indiana was incorporated with a capital stock of $1,600,000, one-half of which was owned by the State and the remainder by private citizens. The law stipulated that each share of stock owned by individuals should pay an annual tax of twelve and one-half cents, to be applied

to the school fund.[1] Here was taxation for school purposes, but not general taxation. The burden fell only upon a special class and that a small one, which was considered peculiarly favored by having a monopoly of the banking business in Indiana for twenty-three years. Still it provided for a general State fund which was managed for some time by the State Sinking Fund Commissioners. In 1843 it was paid into the State treasury and loaned by the Auditor of State on real estate mortgages.[2] Two years later it was distributed to the counties and loaned as other school funds.[3] In 1852 it became a part of the common school fund[4] and added about $80,000 to the total.

Another provision of the law organizing the State Bank of Indiana proved to be of great financial importance to the public schools. In order to take stock in the State Bank and to make loans to individuals who wished to invest in that institution, it was necessary for the State to borrow money. This loan was to be repaid from the proceeds of a sinking fund, which consisted of the unapplied balances of the loan made to the State, the sums (principal and interest) paid on the loans made by the State to the stockholders, and the dividends or profits received by the State as a stockholder. It was provided that after the payment of the original debt created by the State for this purpose and all expenses, the residue should be a permanent fund and be appropriated to the cause of common schools.[5] The sinking fund was managed by a board of commissioners, who loaned the money in their charge on real estate mortgages. It was so wisely handled that not even a dollar was lost. In 1841 it was pro-

[1] *Laws*, 1833–4, pp. 15–16.

[2] *Rev. Stat.*, 1843, p. 248.

[3] *Laws*, 1844–5, pp. 60–2. See also page 45 above.

[4] *Rev. Stat.*, 1852, i, p. 439; *Constitution*, art. viii, sec. 2.

[5] *Laws*, 1833–4, pp. 35–6.

vided that the funds, as they were paid in by borrowers, should be invested in the stock of the State bank.[1]

In 1852 it became a part of the common school fund. In 1859 the General Assembly ordered the distribution of a part of this fund to the counties to be loaned as other school funds.[2] In 1865 the office of the Sinking Fund Commissioners was abolished and the remainder of the fund was invested in State stocks upon which the State paid interest.[3] In 1889 the moneys accruing to this fund were repaid and it was distributed among the counties and loaned as the other school funds.[4] The amount realized from this source was $4,255,731, more than 40 per cent. of the entire school fund.

The contrast between the loose, wasteful and fraudulent administration of the congressional township and seminary funds under decentralized control and the honest and efficient management of the sinking fund under centralized control is striking indeed.

VII. *General Taxation and the Consolidation of the School Funds.* The first law which provided for a public school system authorized the raising of funds by local taxation for both tuition and building purposes.[5] This policy was continued by subsequent legislation. There does not appear to have been any doubt as to the soundness of this principle. It harmonized with the prevailing ideas in respect to self-government. If a district wished to place such a burden upon itself and liked that sort of thing, it was not the business or right of any other part of the State to gainsay it. The State, therefore, granted to local municipal corporations the power of taxation for school purposes. But the support

[1] *Laws*, 1840–1, pp. 192–5.

[2] *Laws*, 1859, p. 186. See also page 45 above.

[3] *Laws*, *Spec. Sess.*, 1865, p. 139.

[4] *Laws*, 1889, pp. 235–7.

[5] *Rev. Stat.*, 1824, pp. 379–385.

of schools by general taxation under laws imposing burdens upon all alike, the willing and the unwilling, the rich and the poor, the head of a family and the single man, was quite a different thing. Many years of experience and material development were needed to bring the people of the State to an avowal of that principle.[1]

In the general tax law of 1836 were two provisions designed to increase the revenues for school purposes. The tax collectors were directed to pay one-fourth of the poll-tax assessed for State purposes to the treasurer of each congressional township. It was to be distributed to the school districts in the same way as the revenue from congressional township funds.[2] The other provision directed the county boards to set apart for the encouragement of the common schools five per centum of the gross amount of revenue collected in their respective counties for State purposes. This sum in each county was to be deposited with the school commissioner and by him divided among the several township schools in proportion to the amount of revenue paid by each township.[3] Here was a law universal in its extent and mandatory in its character; but the funds derived therefrom were to be expended within the township or county where they were collected. No provision was made for State control over this expenditure or over the schools maintained by the aid of it. This promise of progress towards the support of the district schools by aid from the State revenue was not fulfilled. At the very next session the General Assembly repealed these provisions.[4] There can be no doubt that the Legislature by this action reflected the popular sentiment.

[1] As early as 1832 Governor Noble recommended appropriating from the State treasury the annual surplus money, apportioning it among the schools that might be supported by tax or contributions six months in the year, leaving it with each Legislature to name the sum to be divided. *House Journal*, 1832–3, p. 19.

[2] *Laws*, 1835–6, p. 33.

[3] *Laws*, 1835–6, p. 34.

[4] *Laws*, 1836–7, p. 112.

The men who were giving the most earnest consideration to the subject of public schools saw the remedies which were necessary to cure the "system" of its evils. The three chief amendments which they urged were: (1) general taxation for the support of the schools; (2) the distribution of a common school fund by the State according to population; and (3) supervision of the system by a State Superintendent and by county or district[1] superintendents.[2] As the result of a campaign extending over a decade, these principles were in part incorporated into the Constitution in 1851.

A bill authorizing a general tax for school purposes passed the House in 1848, but failed to become a law. The question seemed too grave to be determined hastily by the legislators alone. Therefore, the General Assembly provided for a popular vote on the question of the enactment of a law by the next Legislature "for raising by taxation an amount which, added to the present school funds, shall be sufficient to support free common schools in all the school districts not less than three nor more than six months in each year."[3] The campaign preceding the election was vigorous and even bitter in some localities. "Partisan politics, sectarian bias, the antagonisms of social classes and personal preferences, were all arrayed against the establishment of State, tax-supported schools." "The most vigorous opposition came from the improvident, the needy, the hand-to-mouth laborer, and the ignorant, who most needed the free schools."[4] The result of the election showed a majority in favor of a

[1] Not school districts, but districts composed of several counties.

[2] *Rep't Supt. Com. Schools, Doc. Journ.*, 1846–7, Pt. ii, p. 130.

[3] *Laws*, 1847–8, p. 48.

[4] Boone, *op. cit.*, p. 102. It is said that in some places citizens appeared at the polls with arms to intimidate the advocates of free schools. *Indiana School Journal*, 1876, p. 298.

State tax; but the decision was far from unanimous. In fact, thirty-four per cent. of the counties and forty-four per cent. of the electors registered their votes against the proposition. This lack of unanimity, combined with that vague dread of centralization, gave to the legislation of the ensuing session its hesitating and uncertain tone.

The most important provisions of the school law of 1849[1] were contained in the first section, which provided for the increase of the common school revenue by imposing a tax of 10 cents on each $100 worth of property, a poll tax of 25 cents, and a tax of $3 on each $100 of insurance premiums paid in the State to the agents of companies not chartered in Indiana. A special district tax for the purpose of building and furnishing school houses, and a special tuition tax for the purpose of continuing the schools after the public funds had been exhausted, might also be raised by a vote of the qualified electors of the district.[2] Heretofore the State had contributed a mere pittance to the public schools. The congressional township fund, the surplus fund, and the saline fund were the gifts of a generous national goverment; the bank tax fund was not yet available; the delinquent tax funds and the contingent funds produced only insignificant sums. If these had not been supplemented by the contributions of public-spirited citizens, the educational facilities would have been even more meagre and inadequate. The assumption of this burden was now actually undertaken by the State. Naturally, it would demand more exact information respecting the extent, the merits and the administration of a system in which it was so much interested financially.

A complete scheme of reports was provided for. Teachers were required to furnish district trustees a full statement of

[1] *Laws*, 1848–9, pp. 123–130.

[2] *Laws*, 1848–9, pp. 124, 126.

the number of pupils, the average attendance, the length of the school term, the branches taught and the books used. This report with additional information as to the number of children of school age in the district, and the condition of the school house, was certified by the district trustee to the clerk of the board of township trustees, and certified by him to the county auditor with a statement of the township expenditures for tuition and other school expenses. The county auditors in turn reported to the Superintendent of Common Schools the substance of all reports made to them by township clerks, with additional information as to the number of unorganized townships, and the amount and condition of school loans. The Superintendent was to submit a summary of the auditors' reports to the General Assembly. To secure a prompt compliance with these provisions, it was stipulated that no teacher was entitled to his compensation, and no board of township trustees was entitled to its distributive share of the school revenues, until the required reports were made. Further means for securing obedience to these provisions of the law were provided by making county, township or district officers who failed or refused to discharge any of the duties of their offices liable in an action for debt; by making the offices of the township and district trustees obligatory; and by denouncing heavy penalties and fines upon any school officer guilty of embezzlement.[1] Still the imposition of these penalties was left to the local judicial officers, who might be influenced by personal friendship and sympathy. No State officer could even take the initiative by instituting proceedings in the courts. And the subsequent reports of the State Superintendent of Common Schools indicated the partial failure of these provisions.

The basis of the distribution[2] of the revenues within each

[1] *Laws*, 1848–9, pp. 126–8; sects. 11, 17–21, 23.

[2] *Laws*, 1848–9, p. 124.

county was the congressional township with its fund derived from the National Government. This has proved a prudent arrangement. In the apportionment of the revenue to the counties, the law contained a fundamental imperfection. It set apart all the school revenues, except the tax upon insurance premiums,[1] for the support of the schools within the respective counties in which they were collected. "This perpetuated one of the most vicious policies to which State schools were ever subjected." "What was a privilege to one [county] was a burden to the other." "There was no State system." "What one section did easily and liberally, another did feebly and badly, or not at all."

The most vital defect of all was in the permissive nature of the whole law. It was not to go into effect in any county, until a majority of the voters of that county at a general election had given their assent to such an increase and extension of the benefits of common schools. If it was rejected, an opportunity to vote upon it was to be given at each succeeding election until it was adopted.[2] This proviso nullified in forty per cent. of the counties all the advantages which the earlier provisions of the law seemed to guarantee.[3] Even in the counties which adopted the law, it failed to command the hearty support of all officers and leading citizens. Many of them looked upon all public schools, "State-founded, State-supported and State-controlled, with teachers having public credentials and civil contracts, as a species of centralization, the usurpation of local rights, the

[1] The tax upon insurance premiums was paid into the State treasury and apportioned by the Treasurer among the counties in proportion to the number of polls therein.

[2] *Laws*, 1848–9, pp. 130, sect. 31.

[3] At the August election in 1849 fifty-four counties gave majorities in favor of the law; twenty-six counties voted against its adoption, and ten counties made no return whatever to the State Superintendent. *Rep't Supt. of Com. Schools*, 1849, *Doc. Journ.*, 1849–50, Pt. ii, p. 245.

infringement of personal and family liberties." One opponent summed it up tersely by saying: "The whole State school system is foreign and antagonistic to the American political institutions and traditions."[1]

Nevertheless, confidence in a State-supported system of education was growing, and at the first session of the General Assembly under the new Constitution there was almost no opposition to the levying of a tax of ten cents on each $100 for school purposes. This law corrected the defect in the former method of distribution. The proceeds derived from the tax were to be credited to the general school revenue and to be apportioned among the counties according to the number of children of school age.[2] The school corporations of cities and townships were granted power to levy by a vote of the electors taxes for building purposes and for the support of the schools after the State school revenues had been exhausted.[3]

The distribution of the revenues in proportion to the children of school age was an unpopular innovation. There was opposition, because the revenues raised under the State levy for school tuition were not expended exclusively within the counties in which they were obtained; because the older and richer counties paid more school tax in proportion to the number of their children than the newer and poorer counties; and because some people objected to paying taxes in any form for the support of education.[4]

The enforcement of the law was resisted and its constitutionality contested on other grounds. The result was that within four years the law was emasculated by the decisions of the Supreme Court. It was held that township taxes must

[1] Quoted by Boone, *op. cit.*, p. 122.

[2] *Rev. Stat.*, 1852, p. 443.

[3] *Ibid.*, pp. 442, 444.

[4] *Second An. Rep't Supt. Pub. Instr.*, 1853, p. 24.

be levied by the trustees and not by a popular vote, and this provision was, therefore, unconstitutional. The whole clause authorizing a local tax for tuition, even when assessed by the township trustees, was also declared unconstitutional. The Supreme Court said that this provision, if constitutional, would destroy the uniformity of the common school system. "The power of controlling schools would necessarily, to a great extent, pass from the State and the Superintendent into the hands of the local authorities of the different townships." "It was evidently the intention of the framers of the constitution to place the common school system under the direct control and supervision of the State, and make it a *quasi* department of the State government." "Common schools are thus established as a State institution, under the Superintendent of Public Instruction as its official head, and to be supported as to tuition by State funds." Taxes for State purposes could not be levied by local and special laws, but only upon a uniform and equal rate of assessment and taxation. The section permitting local taxation violated this restriction, for it was not a State tax, but specific and local, levied by vote for the support of a part of the common school system.[1]

This decision seems narrow and inconsistent with the spirit of the new Constitution. Here was the opposite extreme. Under the old system no support was given by general taxation. By this interpretation all revenue for tuition must be levied by the State by a general tax and could not be supplemented by local taxation. The General Assembly, in 1855,[2] revised the school law to make it harmonize with the

[1] Greencastle Township (Putnam County) *et al. v.* Black, 5 *Ind. Rep'ts*, pp. 563–5, 571–3. A similar law authorizing local taxation for tuition purposes in towns and cities was declared unconstitutional by the Supreme Court. City of LaFayette *v.* Jenners, 10 *Ind. Rep'ts*, p. 76.

[2] *Laws*, 1855, p. 162.

decisions of the courts. One result of these judicial decisions was to leave to the State the exclusive provision of tuition revenue (except that arising from congressional township funds), and to the school corporations the exclusive provision of building funds.

To secure to townships the exclusive use of the income from the congressional township fund, it was provided that the State Superintendent should make the annual apportionment of the income from the common school fund and from school taxes to the counties "according to the enumeration of scholars therein, without taking into consideration the congressional township fund in such distribution." In making the distribution within the county, the auditor was "to ascertain the amount of the congressional township fund belonging to each city, town and township," and to "so apportion the income of the common school fund as to equalize the amount of available funds in each city, town and township" as near as might be, according to the number of scholars therein, provided that in no case the income of the congressional township fund belonging to any congressional township should be diminished by such distribution and diverted to any other township.[1] The constitutionality of this law was sustained, the court holding that the State had power, by virtue of her sovereignty, so to discriminate between the townships already provided with school funds and those which had none, as to place them upon an equality.[2]

The reports of township trustees, in the first years under the law of 1852, were very incomplete and were regarded by the State Superintendent as "so imperfect and unsatisfactory as to be wholly useless for publication."[3] With the object

[1] *Laws*, 1855, pp. 175–6.

[2] Quick *et al v.* Springfield Township, 7 *Ind. Reports*, p. 636.

[3] *An. Rep't Supt. Pub. Instr. for 1853*, p. 28.

of securing greater promptness and accuracy in the reports, amendments were made in 1855. County Commissioners were required to examine the accounts, and proceedings of county treasurers and auditors in relation to the distribution of the school fund.[1] This law was designed to prevent any misuse or diversions of funds after the distribution had been made. Township trustees were required to make their reports to the county auditor, who was to report to the State Superintendent of Public Instruction.[2] This arrangement tended to prevent many mistakes and much delay; to furnish better opportunities to secure prompt, full and reliable statistics; and to arouse careless and indolent officials to action. There were complaints still, of delays and failures to report, and even of the loss of loans.[3] It was felt that further protection of the funds and revenues was necessary. The law of 1861 sought to secure this.

The Superintendent of Public Instruction was given power at any time, when he should discover from the reports any deficit, to direct the attention of the board of county commissioners and the county auditor to the fact. The board was thereby authorized and required to make good such deficit.[4] It was also made the duty of the State Superintendent to visit each county annually, for the purpose of examining the auditor's books and records relative to the school funds and revenues; and to cause suits to be instituted in the name of the State for the recovery of any portion of these trusts.[5] Provision was made for the closer examination of the books and accounts of auditors and treas-

[1] *Laws*, 1855, p. 173.

[2] *Ibid.*, p. 166.

[3] *Rep't Supt. Pub. Instr. for 1860, Doc. Jour.*, 1860–1, pt. ii, p. 321–331; *Ibid.*, for 1863–4, *Doc. Journ.*, Pt. i, p. 39. From 1842 to 1860 about $32,000 were lost.

[4] *Laws, Reg. Sess.*, 1861, p. 69.

[5] *Ibid.*, pp. 91–97.

urers by the county board, and for more elaborate reports from the latter to the State Superintendent and Auditor of State. County commissioners were given power to remove any trustee guilty of fraud.[1] The law attempted to insure greater accuracy and promptness in the matter of reports. For the failure of any teacher to report to the trustees, twenty-five per cent. of his salary was to be withheld. For the failure of the trustee to report to the school examiner, the township was to suffer a diminution of $25 of its share of the school revenue, which was to be withheld by the county auditor; the trustee was made liable on his bond for the amount of such reduction and also subject to an action against him by any person in the name of the State for the recovery of any sum not exceeding $10 for the use of the county. On failure of any county auditor to make to the State Superintendent his report in time for the semi-annual apportionment, his county was subjected to a diminution of $100 in the next apportionment of revenue by the State Superintendent. The sum thus withheld could be collected from the auditor in a suit before a justice of the peace, prosecuted in the name of the State by any person living in the county who had children enumerated and who was aggrieved.[2] A similar penalty was imposed upon the examiner for failure to make his reports.[3]

Four years later, in order to obtain accurate information as to the exact amount and condition of the school funds, auditors were required to make a special examination of the records relating to the common school and congressional township funds, and to report the amounts ascertained to the boards of commissioners of their respective counties for their approval. The county commissioners after approving and recording the returns in their books were to forward a

[1] *Laws, Reg. Sess.*, 1861, pp. 87, 95.

[2] *Ibid.*, pp. 73, 74, 89. [3] *Ibid.*, p. 79.

certified copy to the Superintendent of Public Instruction for his approval. If approved by him, the amounts were to be recorded in his office and the county auditors were to be so notified; and thereafter such statements were to be regarded as conclusive evidence of the facts contained therein.[1]

The law[2] establishing the office of county superintendent and conferring upon him power to examine the records of officers who handle school moneys, and to institute suits if necessary, has had a good effect. In the first report of the State Superintendent after the passage of the law, he showed that the county superintendents had actually saved in 77 counties $52,472 delinquent moneys for the school fund. Other sums would have been lost " if officers had not known that the county superintendent was at their backs, and would speedily discover their delinquency and expose them."[3]

This practically ends the struggle to secure satisfactory information respecting the school finances and to impose a reasonable control over their administration. Since 1861 complaints on account of delayed, inaccurate or incomplete reports have grown less and less frequent; and since 1868 there have been almost none.

The great obstacle, however, in the way of the progress of the schools was the lack of adequate revenue. This was pointed out by every Superintendent of Public Instruction for a dozen years. The Legislature had, in 1865, increased the State levy for school purposes to sixteen cents;[4] but what was needed was the supplementary local taxation, which had been declared unconstitutional in 1854. In 1867,

[1] *Laws, Spec. Sess.* 1865, p. 144. Some special acts were afterwards passed changing the statements of certain counties because of the discovery of new facts.

[2] *Laws*, 1873, p. 789.

[3] *Bien. Rep't Supt. Pub. Instr.*, 1873–4, p. 29.

[4] *Laws, Reg. Sess.*, 1865, p. 5.

relying upon a change in public sentiment and in the attitude of the judiciary, a bold step was taken, which was nothing less than the re-enactment of the discarded law of 1852. The trustees of civil townships and of incorporated towns and the common councils of cities were empowered to levy annually a tax, the proceeds of which were to be kept by the same officers and applied and expended in the same manner as funds rising from taxation for common school purposes by the law of the State.[1] The constitutionality of this law remained unassailed for eighteen years and then was upheld by the Supreme Court.[2] In 1873, the first year in which the taxes under this law were available, $530,668 were added to the tuition fund. For the year 1900 the amount derived from the local tuition tax was $2,684,914, almost 50 per cent. of the total tuition revenue. The rapid increase in the amount of the local tuition revenue was the chief argument advanced to secure a reduction of the State levy to thirteen and one-half cents in 1893[3] and to eleven cents in 1895.[4] It is believed that Indiana has found a happy solution of the school revenue question. Dependence solely upon local revenue would lead to inequality of school privileges and retrogression in the poorer communities. Reliance entirely upon State support would invite local indifference and extravagance and lead to increased expenditures by the State. A proper combination of State and local support secures all the advantages with none of the evils of the two systems.

In reviewing the financial phases of the school history, it has been noticed that as the State has assumed more and more the burden of maintaining the schools, the accountability exacted from school officers has become stricter knowledge as to the scope and methods of instruction has

[1] *Laws*, 1867, pp, 30 1.

[2] Schenck *v.* Robinson, 102 *Ind. Rep'ts*, p. 307.

[3] *Laws*, 1893, p. 182. [4] *Ibid.*, 1895, p. 299.

grown more accurate, greater permanence has resulted, and a nearer approach to uniformity and universality has been made.

4. SCHOOL SUPERVISION.

I. *The Establishment of the Agencies of Supervision.* The evolution of State supervision can best be presented by following the development which has been made along the separate lines of centralization. This section will attempt to present the conditions which led to the establishment of the agencies of supervision, and subsequent sections will show the later development and results of their authority.

(*a*) *The State Superintendent of Public Instruction.* Under the law of 1824, which inaugurated the school system, there was no thought of providing any systematic supervision of school finances or organization. No township trustee, sub-trustee nor any other officer was given authority to visit the schools or to inspect them, in order to ascertain whether or how the teacher was performing his contract; and it was many years before any such control was exercised.

As early as 1833 a bill was passed by the Senate [1] providing for the establishment of a Board of Education for the encouragement of common schools; but it was rejected by the House.[2]

The first evidence of any broad conception of this need of the schools is found in the report of Hon. John Dumont. It presents so forcibly the value of intelligent supervision as a remedy for the existing conditions that one is justified in quoting him at length. "There is," he says, "no important concern of our State Government left without supervisory authority to watch and direct its operations, the primary

[1] *Sen. Journ.*, 1833–4, pp. 181, 209.

[2] *House Journ.*, 1833–4, p. 415.

schools alone excepted. . . . The people have been left to struggle and grope their way without guides, without direction, without cheering from the constituted authorities. No general plan has been laid before them. No visitors have been appointed. Impositions are continually practiced upon districts and sometimes upon whole townships, by which all the bounty of Congress and of the State is drained from the people and put into the pockets of ignorant pretenders." To remedy these evils he suggested that the State should be laid out in large districts, and that a suitable person in each should be appointed, to visit each county at least once a year; to examine the county seminaries; to inquire into the manner in which school commissioners and other officers kept their books and performed their duties; to visit the district schools; to receive from the several officers detailed reports of all school matters connected with the districts, townships and counties; and to grant certificates to teachers upon satisfactory examinations. He further recommended that the several visitors should constitute a State Board of Common School Education, which should meet annually, report to the Legislature the result of the examinations and recommend amendments to the school laws. The Board should also devise and recommend from time to time the mode of instruction and the books and apparatus to be used in county seminaries and district schools, leaving it optional with the trustees respectively to adopt the suggestions. As results of such a "visitatorial system," Mr. Dumont anticipated that the importance of the instruction of their children would be impressed upon the minds of parents; that neighborhood feuds and private strifes would in a degree vanish; and that the united efforts of almost every district might soon be expected. "A competent class of teachers," he goes on to say, "will succeed those who are now totally unqualified for their stations. The whole swarm of worth-

less teachers who are now preying on the inhabitants, will be driven from the State, or be compelled to seek other employments. An emulation will arise among the teachers; . . . a personal emulation and a district pride will pervade the breasts of the children; parental love and parental pride will be enlisted, and then, the whole grand work will have received such an impetus as to bid defiance to all obstacles." [1]

Notwithstanding this enthusiastic plea and subsequent recommendations[2] to that effect, centralized supervision was not attempted until 1843. The important law[3] of that year conferring upon the Treasurer of State the functions of a Superintendent of Common Schools has already been mentioned.[4] While his duties pertained chiefly to financial and statistical matters, he had authority to hear appeals in certain cases and to render final decisions thereon.[5] Besides, he was required to communicate to the Legislature plans for the better organization of the common schools and all matters relating to the cause of education which he should deem expedient. Here was a discretionary authority which might have been elaborately developed. But this was not done, because the Treasurer had neither the time nor the professional knowledge to apply to the task, which was merely incidental to his office.

The Superintendent of Common Schools in his first annual report expressed the regret that he had so little to communicate on that important subject. He showed that according to the U. S. census of 1840, there were 1,521

[1] *Sen. Journ.*, 1836–7, pp. 181–5. A bill embodying these suggestions, though somewhat modified in detail, was reported by the committee on education in the in the Senate, but was rejected by a vote of 15 to 27. *Ibid.*, pp. 377 and 413–415.

[2] *House Journ.*, 1838–9, pp. 414–427; 1839–40, p. 26.

[3] *Rev. Stat.*, 1843, pp. 323–5.

[4] Pages 44–45 above.

[5] This appellate jurisdiction was taken away in 1847. *Laws*, 1846–7, pp. 118–9.

primary and common schools, affording instruction to 48,189 pupils out of the 273,784 children between the ages of five and twenty years then in the State. "But in regard to the course and extent of instruction, the expense of the same, the number of teachers employed, the amount and application of school funds, and other subjects necessary to a proper understanding of the subject, and to the application of successful legislation, we are entirely ignorant."[1] Two years later[2] the Superintendent of Common Schools again referred to the incomplete returns made to his office. Though there was "want of a regular system of instruction, of government and discipline in the schools," he was led by information furnished by county auditors and others to believe that the subject of education, though slowly, was gradually improving. He recommended that some person other than the Treasurer of State should be selected as the Superintendent.[3]

The campaign of education conducted by the advocates of State supervision during the decade from 1840 to 1850[4] so enlightened public opinion that, in spite of some opposition in the Constitutional Convention of 1850–1, a clause was inserted in the Fundamental Law[5] creating the office of Superintendent of Public Instruction. The Legislature of 1852 provided for his biennial election, prescribed his duties, and established a State Board of Education. It was the duty of the Superintendent to present to the General Assembly or to the Governor, when the Legislature was not in session, an

[1] *Report of the Supt. of Com. Schools* for 1843, in *Doc. Journ.*, 1843–4, *House Reports*, p. 327.

[2] *Report of Supt. of Com. Schools* for 1845, *Doc. Journ.*, 1845–6, pt. ii, p. 103–5.

[3] This recommendation was repeated in nearly every subsequent report, and was also urged in the messages of governors.

[4] See pages 34–36, 63 above.

[5] *Constitution*, art. viii, sec. 8.

annual[1] report giving an exhibit of his labors, the results of his experience and observations, suggestions for the improvement of the system, and statistical tables prepared from the materials transmitted to his office; to visit ten days annually in each congressional district[2] superintending institutes, giving counsel to trustees and teachers, and delivering lectures; to submit to the State Board a list of text-books for their inspection and approval; to superintend the purchase of township libraries; to hear and determine appeals from township trustees, and to guard the safety and security of educational funds. He had authority to prepare all blank forms for his office and to require information from all local school officials. He was, either by himself or by a deputy, to examine all applicants for license and to grant certificates for one or two years; such licenses could be revoked by him if the teacher proved incompetent.[3]

For a few years immediately after the establishment of the office, the reports of the State Superintendent of Public Instruction were unsatisfactory. This state of affairs was due in part to the discrepancies between the new school law and the new law organizing the civil townships,[4] and in part to the incapacity or indifference of local officials.[5] Subsequent laws corrected these complexities and increased the penalties for failure to comply with the legal requirements.[6] The gradual development of the powers and influence of the State Superintendent of Public Instruction will be traced in subsequent pages.

[1] Biennial reports in place of annual reports were required in 1861. *Laws, Reg. Sess.*, 1861, p. 97.

[2] Modified in 1855 by requiring him to spend annually on an average at least one day in each county. *Laws*, 1855, p. 178.

[3] *Rev. Stat.*, 1852, i, pp. 448–450.

[4] *Rep't State Supt. Pub. Instr.*, 1853, p. 27.

[5] *Ibid.*, 1858; *Doc. Journ.*, 1858–9, pt. ii, p. 297.

[6] *Laws*, 1855, p. 173; *Reg. Sess.*, 1861, pp. 69–74, 89–97.

(*b*) *The State Board of Education.* The State Board of Education, according to the Act of 1852, consisted of the State Superintendent of Public Instruction, the Governor, the Secretary, the Treasurer and the Auditor of State. They were required to meet annually at Indianapolis "for the purpose of more effectually promoting the interests of education by mutual conference, interchange of views and experience of the practical operation of the system, the introduction of uniform school books, . . . and the discussion and determination of such questions as may arise in the practical administration of the school system."[1] Criticism against the composition of the Board may be in part forestalled by stating that the most urgent need at that time was the proper administration and preservation of school funds and revenues. Few persons were more competent to give advice upon this subject than those officers enumerated above. Three years later, in order to give them a capable legal adviser, the Attorney General was added to their number.[2] Aside from their advisory functions in regard to legal and financial matters, they were chiefly concerned with the recommendation of text-books, and the selection of books for township libraries.

In the course of a few years the legal and financial questions were in the main disposed of and new problems of a technical nature were demanding solution. It was then felt that the efficiency of the Board would be increased by a change in its composition. In 1865 it was made to consist of the Governor, the State Superintendent of Public Instruction, the President of the State University, the President of the State Normal School, and the Superintendent of common schools of the three largest[3] cities in the State.[4] Up to this

[1] *Rev. Stat.*, 1852, i, p. 457. [2] *Laws*, 1855, p. 183.

[3] The size of cities for this purpose was and is determined by the school enumeration.

[4] *Laws, Reg. Sess.*, 1865, pp. 33–4. In 1875, the President of Purdue University was added to the Board. *Laws, Reg. Sess.*, 1875, pp. 130–1.

time the Board had contained but one member, the State Superintendent of Public Instruction, who might be regarded as an expert in educational affairs. The substitution of a board of professional men for one composed of *ex-officio* members charged with prior and paramount responsibilities, proved to be a wise departure. Without any disparagement of the ability or service of the former members, it may be said that with this change begins that influence which has shaped the educational policy of the State for thirty-five years.

In 1899, in answer to the demand that the district schools and the non-State colleges should have more immediate representation on the State Board of Education, there were added to it three other members.[1]

(*c*) *The County Superintendent.* As early as 1834 the office of examiner had been created. The duty of this officer, as the name indicates, was to pass upon the qualifications of teachers.

At the time of the establishment of the State Superintendency, the board of township trustees were required to "visit schools, either as a board or by one of their number, at least twice during each term," for the purpose of examining "the mode of teaching, government, books used, adaptation of school-houses and furniture, the comfort and health of the scholars, condition of such school-houses and furniture, and all matters connected with the comfort and efficiency of the schools."[2] As such supervision was merely perfunctory and non-professional, it was of little value. It was soon realized that there was a serious defect in the system which was due to the "strange and inconsistent hiatus between the township trustees and the State Superintendent." The latter advised the creation of ten subordinate superintendents,

[1] *Laws*, 1899, p. 426–7. See also below, ch. 1, sec. 5, ii (b).

[2] *Rev. Stat.*, 1852, i, pp. 440, 442.

"coadjutors of the State Superintendent," whose duty it should be to visit each township annually, to supervise schools, address the pupils and teachers, hold teachers' institutes and stimulate the educational life of the community.

It seemed more feasible to expand the authority of the examiners, and to give them supervisory and administrative powers. A beginning in this direction was made in 1861. The number of examiners in each county was reduced from three to one, who received his appointment from the board of county commissioners for a term of three years. Besides his authority to grant licenses to teachers, he[2] was required to make the annual statistical reports to the State Superintendent and to the county auditor; to hear appeals from the decisions of trustees and render decisions which were final in all local questions; to act as a "medium of communication between the Superintendent of Public Instruction and the subordinate school officers and schools;" to visit the schools of his county as often as he might deem it necessary for the purpose of increasing their usefulness and elevating, as far as practicable, the poorer schools to the standard of the best; to advise and secure, as far as practicable, "uniformity in their organization and management, and their conformity to the law and the regulations and instructions of the State Board of Education and Superintendent of Public Instruction;" to encourage teachers' institutes and associations; and to advise the trustees as to the most approved school furniture, apparatus, and educational agencies.[3] In the visitatorial and advisory functions of the office, there seemed great possibilities. The law was at first eminently satisfactory to teachers and officers. The greater care in

[1] *Rep't State Supt. Pub. Instr.*, 1854, *Doc. Journ.*, 1854–5, pp. 734–5.

[2] In place of the county auditor.

[3] *Laws, Reg. Sess.*, 1861, pp. 78–9.

licensing teachers, the extensive visiting of the schools and the advising with trustees, directors and teachers tended to elevate the character of the schools.[1] "The examinations were fairer; the grade of teachers had been improved; better texts were used; trustees showed a more intelligent interest in the schools; institutes grew in favor, the State's knowledge of her system through statistical reports became more complete and trustworthy, and altogether the office had more than justified its existence."[2]

While this was true in the best counties, in others the law was poorly, if at all, enforced. Examiners could not afford to visit schools for the compensation[3] which they were authorized by law to receive; hence, competent men refused the office.[4] Many examiners did not deem it necessary, but occupied their time in teaching, in the practice of law or medicine, or in following some other vocation.[5] The teachers in the rural districts were not only independent of each other, but, in a large degree, independent of any directing head. Each teacher did whatever seemed best to him; there was no unity in classification, course of study, text-books, methods of instruction or discipline. It was the almost unanimous conclusion among educators in Indiana that the "one thing needful" in the school system was to extend the powers, duties and compensation of the school examiner, and thus establish a greater degree of local and State centralization.[6] This reform was effected in 1873, by the creation of the office of county superintendent.[7]

The difference between the legal duties of the county

[1] *Bien. Rep't. State Supt. Pub. Instr.*, 1863–4, *Doc. Journ.*, pt. i, p. 54.

[2] Boone, *op. cit.*, 245.

[3] Three dollars per day.

[4] *Bien. Rep't Supt.* Hobbs, 1869–70, pp. 55–6.

[5] *Bien. Rep't State Supt. Pub. Instr.*, 1873–4, p. 25.

[6] *Bien. Rep's Supt.* Hopkins, 1871–2, pp. 53, 88, 153.

[7] *Laws*, 1873, p. 75–9. He was elected bi-ennially by the township trustees.

superintendent and those of the county examiner does not seem great, but in practice it was. County examiners had been required to visit only when they deemed it necessary; county commissioners could limit the number of days spent in visiting and in the performance of other duties. Indeed, very little visiting was done.[1] "The truth is that we have had county superintendency in Indiana for more than twenty-five years, the chief difference between the present and the former system being that the one provides for efficient supervision, while the other did not."[2]

There was, however, some dissatisfaction at the increased centralization, which attempted to conceal itself under a pretended apprehension of expense and extravagance. As a consequence of this opposition, the compensation of the county superintendent was diminished and the number of days which commissioners might allow for visiting schools was reduced one-half.[3] These changes seriously weakened the system, as they made it unprofitable in many counties for a competent man to accept the office. Since then this defect has been remedied.

In 1873 the State Superintendent succeeded in obtaining a convention of the county superintendents for the purpose of discussing the nature and needs of their work. These meetings have been held annually since then and have exerted a most beneficial influence upon the graded schools.

Recommendations were made from time to time by State Superintendents, associations of teachers and of county superintendents, and by legislative committees as to the powers of the county superintendent, his tenure of office, his qualifications, his salary, and the method of his selection. But no material change was made between 1875 and 1899.

[1] *Bien. Rep't State Supt. Pub. Instr.*, 1873–4, p. 25.

[2] *Bien. Rep't State Supt.* Smart, 1875–6, p. 91.

[3] *Laws, Reg. Sess.*, 1875, pp. 133.

The term of office was then increased to four years. The possession of a thirty-six months' license or a life or professional license to teach was made an essential qualification for the office.

The value of the more intimate connection with the internal administration of the schools and institutes can not be definitely measured, but in the estimation of educators it has been very great. Superintendent Bloss summarized it concisely by saying, that "superintendence means suggestions to teachers as to better methods of discipline and of imparting instruction, better observance of laws of health in school rooms, better gradation of schools, better programs for the employment of time; suggestions to trustees as to better care of school-houses, grounds, furniture, apparatus, and much more."[1]

(*d*) *The County Board of Education.* The Legislature of 1873 also provided for the greater local centralization and a more harmonious co-operation of the various school corporations within the county by creating a county board of education. It was composed of the county superintendent, the township trustees, and the school trustees of the towns and cities of each county.[2] The duties of the county board were to consider the wants and needs of the schools and school property and all matters relative to the purchase of school furniture, books, maps, etc.; to supervise the care and management of township libraries, and (except in cities) to adopt text books.[3] By virtue of the law of 1889, their authority over the adoption of text-books is restricted to the township high schools.[4] Their discussions "have

[1] *Bien. Rep't State Supt. Pub. Instr.*, 1881–2, p. 149.

[2] The towns or cities were represented by the chairmen of their respective boards of trustees in 1877. *Laws, Reg. Sess.*, 1877, p. 122.

[3] *Laws*, 1873, pp. 78–9.

[4] See below, ch. i, sec. 4, iv.

aided materially in arousing a spirit of emulation among township trustees in all matters pertaining to school work."

(*e*) *The City Superintendent.* The necessity of organization and classification was felt keenly in the cities, where large numbers of pupils were gathered together in the schools. During the period before any legal provision was made for the supervision of city schools, this function was either performed by some *ex officio* officer or neglected entirely. It was not until 1871 that the city of Indianapolis was authorized by law to employ a city superintendent.[2] In 1873 this authority was extended to all cities and towns.[3]

II. *The Licensing of Teachers.* From the first attempt to establish a school system, it was recognized in theory that some special test of the fitness of teachers should be required. The law of 1824 gave the sub-trustees of the school district authority to employ a teacher, who was required "to produce the certificate of the township trustees that they have examined him touching his qualifications and particularly as respects his knowledge of the English language [reading and spelling], writing and arithmetic."[4] Although this provision was mandatory, the practical operations of the law could scarcely be called a test. The officers who passed upon the qualifications of teachers seldom had qualifications sufficient to apply the law. Incapacity to earn a living in any other way seemed often the chief recommendation of the teacher. State Superintendent B. C. Hobbs said: "The pioneer teachers were generally adventurers from the East or from England, Scotland or Ireland, who sought temporary employment

[1] *Bien. Rep't State Supt.* Geeting, 1895–6, p. 435.

[2] *Laws*, 1871, p. 20 ff. [3] *Laws*, 1873, p. 68 ff, sec. 12.

[4] *Rev. Stat.*, 1824, p. 384. Repeated in 1831. *Rev. Stat.*, p. 476.

* * * * or men unsuccessful in trade, or who were lame or otherwise disabled.[1]

In 1833 it was provided that no teacher should be employed unless he should "sustain a satisfactory examination before the district trustees, touching his ability to teach reading, writing and arithmetic."[2] An effort was made in 1834 to give to the examination a more professional nature. The Circuit Court was given power to appoint annually for each county three examiners, whose duty it was "to certify the branches of learning each applicant was qualified to teach." Their authority was not final; for they were "only an auxiliary to aid" the district trustees, who still possessed the right to examine the teachers.[3] In other words, a teacher holding a certificate of qualification from the examiners might be refused employment if he had not been examined and approved by the district trustees. A few years later trustees were forbidden to employ any teacher who did not hold a certificate granted by one of the examiners; but the district trustee enjoyed the privilege of subjecting the applicant to further inquiries, to ascertain whether or not he was of good moral character.[4] The following year it was made optional with the district trustees to require any teacher asking for employment to procure a certificate from the school examiners, stating the branches which he was qualified to teach.

In spite of this reactionary provision, there was a growing conviction that the improvement of the schools was dependent upon the elevation of the teacher's calling to the rank of a profession by requiring of him the possession of higher ability, more thorough preparation and finer character. The personnel of the teaching corps was gradually improving.

[1] Quoted in Dr. J. A. Woodburn's "*Higher Education in Indiana*," p. 44.

[2] *Laws*, 1832–3, p. 99.

[3] *Laws*, 1833–4, p. 328. [4] *Laws*, 1839–40, p. 35. [5] *Laws*, 1840–1, p. 86.

However, it is not to be supposed that in all sections the law was enforced with uniformity and impartiality. Often it was necessary to lower the standard in order to secure any one who was willing to accept the meagre compensation offered.

The law of 1843 designating the Treasurer of State Superintendent of Common Schools instituted no connection between that officer and the county examiners, and required no report from them. The lack of system and uniformity is well illustrated by the special laws for sixteen different counties, permitting their boards of county commissioners to appoint one or more persons in each civil township of their respective counties as examiners of common school teachers.[1]

In 1847 the standard was raised somewhat by the requirement that teachers should be qualified to teach orthography, reading, writing, arithmetic, English grammar and geography; but the last two requirements might be waived by a request of a majority of the voters at a district meeting.[2] Four years later a still greater concession to the wishes of individual neighborhoods was given, by making it lawful for a majority of the voters at a school district meeting to dispense with such legal qualifications of school teachers as they might deem proper.[3]

In 1852 a decided step towards centralization was taken. The office of examiner was abolished and the State Superintendent of Public Instruction was given power, either by himself or his deputy,[4] to examine all applicants for license and to grant certificates for one or two years. Such licenses could be revoked by him if the teachers should prove incom-

[1] *Local Laws*, 1844–5, p. 149; *Special Laws*, 1845–6, p. 230.

[2] *Laws*, 1846–7, p. 118.

[3] *Laws*, 1850–1, p. 167.

[4] He was authorized to appoint one deputy in each county.

petent. No officer could employ a teacher who had not procured a license.[1] The law did not require the deputy to use questions prepared by the State Superintendent, and but few deputies were appointed under this act.[2]

There is little doubt that this centralization of authority was unpopular, for in the next year the office of county examiner[3] was revived. The examiners were required to forward an annual report to the State Superintendent, showing the dates of issuance and expiration of all licenses granted to them. The terms varied from three to twenty-four months. The State Superintendent still had authority to license teachers at his pleasure. As this law[4] applied to all counties and districts without exception, it assured a greater degree of uniformity. At the same time, its flexibility made it adaptable to the needs of all communities and thus, in a measure, silenced objections. The purpose of having a graduated scale was to set a high standard of qualification at which all persons proposing to teach should aim, and at the same time to provide for the existing emergencies, owing to the scarcity of teachers, by authorizing a short-term license to persons who might not be able to pass a rigid examination. From the subsequent reports of examiners, this seemed a wise and necessary expedient.[5]

The regulation of the issuing of teachers' licenses was far from satisfactory. A license granted in one county under a lenient examiner was legal in any other county where a more exacting test was required. There was no authority for the revocation of a license issued by an examiner. There were serious charges of partiality where private examinations were permitted. There was no uniform standard in the

[1] *Rev. Stat.*, 1852, pp. 450, 454.

[2] Boone, *op. cit.*, 242.

[3] From one to three in each county.

[4] *Laws*, 1853, pp. 124–6.

[5] *Second Annual Report State Supt. Pub. Instr.* (1853), pp. 12, 201–214.

examinations even within a single county. "He who was most lenient and superficial was most patronized. A teacher failing to pass with one examiner frequently applied to another and received a license."[1] With the increase of the powers and duties of the examiners in 1861,[2] there went a corresponding centralization of authority over examinations. Licenses were limited in their authority to the county in which they were issued. The examiner was required to report to the State Superintendent the names of the persons to whom he had granted licenses.[3] He had discretion to omit from the test any of the six required branches[4] if requested to do so by the proper trustee. The mischievous effects of this clause were abated by the proviso, that such a license should be limited to the particular school in which the holder wished to teach, could not exceed six months, and could not be repeated to the same person. He had power to revoke licenses for incompetency, immorality, cruelty or general neglect of school business, the defendant having the right to appeal to the State Superintendent. That officer still had authority to issue licenses at pleasure and could revoke certificates which he had granted.[5] These changes resulted in the elevation of the standard of the scholarship of the teachers at least fifty per cent. In some quarters there were at first considerable feeling and opposition, but in a short time the law proved eminently satisfactory to teachers and school officers alike.[6] The State Superintendent expressed the belief that but few "special" or "limited" licenses were issued.[7]

[1] *Rep't State Supt.* Fletcher for 1861, *Doc. Journ.*, 1862–3, pt. ii. vol. i, p. 160.

[2] See p. 81–82 above. [3] *Laws, Reg. Sess.*, 1861, pp. 76–7.

[4] Orthography, reading, writing, geography, arithmetic and English grammar.

[5] *Laws, Reg. Sess.*, 1861, pp. 78–9, 93.

[6] *Rep't of State Supt.* Fletcher for 1861, *Doc. Journ.* 1862–3, pt. ii, vol. i, p. 160

[7] *Rep't State Supt. Pub. Instr.* for 1862, p. 10.

A tendency in the opposite direction was shown in the law enacted in 1865. It provided that if the school meeting should designate the teaching of other subjects or a less number of branches than those required by law, the teacher was to be examined in only those branches.[1] This change received the almost universal disapproval of teachers and examiners;[2] and the provision was in a short time repealed.

The practical questions of the best methods to raise the standard of qualification and to provide for the issuing of licenses were annually discussed by school officials and associations of teachers and of school officers. There was a feeling that suitable provision should be made for the issuing of a teacher's license that should be good in any part of the State and for the lifetime of the holder. The difficulty of finding a suitable board to conduct the examination was solved satisfactorily in 1865, by giving the State Board of Education power to grant "State Certificates of Qualification to such teachers as may, upon a thorough and critical examination, be found to possess eminent scholarship and professional ability and shall furnish satisfactory evidence of good moral character." Such a certificate entitled the holder to teach in any school of the State without further examination, and was valid during the lifetime of the holder.[3] The law very wisely left much to the wisdom and discretion of the Board, who prescribed the conditions upon which State certificates should be issued.

In the local examination of teachers there was great diversity. Each of the ninety-two examiners fixed the

[1] *Laws, Spec. Sess.*, 1865, p. 143.

[2] *Bien. Rep't State Supt. Pub. Instr.*, 1865–6, *Doc. Journ.*, pt. i, p. 321.

[3] *Laws, Reg. Sess.*, 1865, pp. 33–4. In 1883 the same board was authorized to grant "professional licenses," which were good in any county of the state for a period of eight years. *Laws*, 1883, pp. 130–1.

standard for his own county; hence no common standard prevailed throughout the State. In some instances the questions were provokingly difficult; in others they were puerile. In 1871 the State Board of Education took a new departure by preparing a series of twelve sets of examination questions upon the branches required to be taught, and sending one set each month to the examiners with instructions to use them in the examination of teachers on the last Saturday in the month. The examiners generally accepted the questions and acted upon the instructions. The result was the elevation of the general average of the examinations and their complete unification.[1] This is a good example of the wise exercise by the State Board of its advisory power.

An attempt was made in 1899 to constitute the State Superintendent of Public Instruction and the State Board of Education the exclusive agencies for issuing licenses. The arguments advanced in support of the proposition were as follows: It would insure the same standard in all counties; it would equalize wages and elevate the school work in the poorer sections of the State; it would remove the possibility of using personal influence to secure a certificate; it would save teachers the time, expense and annoyance in going from one part of the State to another to take their examinations; and finally, it would give the county superintendents their summer months in which to plan their work for the ensuing year, or to attend advanced schools.[2] This seemed to many conscientious friends of education too great a centralization of power, and the law finally enacted was a compromise. The use of the questions furnished by the State Board of Education was now for the first time made obligatory. Applicants were given the right to elect

[1] *Bien. Rep't Supt.* Hopkins for 1871–2, pp. 55–6.

[2] *Bien. Rep't State Supt.* Geeting, 1895–6, p. 14.

to have their manuscripts sent to the State Superintendent for examination, and a license granted by him is valid in any county. The State high school licenses were made to include, in addition to the common branches, such additional subjects as the State Board may elect. The State Board also fixes the standard of all licenses by indicating the minimum per cent. in each branch and the required average for each grade of license.[1] The authority of the county superintendent in respect to the revocation of licenses, was extended to those hereafter granted by the State Superintendent, with the right of appeal to that officer by the defendant.[2]

The experience in respect to the subject of licensing teachers may be briefly summarized as follows: Prior to 1852, complete decentralization, with the authority vested in district and township trustees (1824–1834) and later in the county examiners (1834–1852)[3]; complete centralization in the hands of the State Superintendent and his deputies (1852–1853); a compromise, effected by giving this authority to county officers (examiners, 1853–1873, and county superintendents, 1873–1902) with the right[4] to grant licenses retained by the State Superintendent until 1865. Since that date there has been a gradual extension of the powers of the State Board of Education and the State Superintendent until they have become the controlling authorities in this matter.

III. *Course of Study and Gradation.* A successful school system demands effective instruction, capable government, stimulation of the pupils' interest and industry, economy

[1] *Laws*, 1899, pp. 488–491.

[2] *Laws*, 1899, p. 245,

[3] There were numerous exceptions in favor of district trustees and patrons.

[4] This power was seldom used.

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of the teacher's time and labor, and the highest utilization of the school revenues. These ends can be attained only through the establishment of graded schools. A graded school is one in which a definite course of study is prescribed, through which pupils progress by regular steps, separate teachers being usually provided for pupils of different degrees of advancement. The development of such a graded system in Indiana has been due, more than to all other causes combined, to the wise foresight and prudence of the State Board of Education and the State Superintendent of Public Instruction.

The first legal utterance bearing on the subject of the course of study is found in an act of 1819, which authorized the trustees of an incorporated congressional township to distribute a part of the proceeds from the rent of school lands among the schools of the township "in proportion to the number of schools [scholars] learning the English language." But no allowance was to be "made for any scholar who is learning any other than the English language."[1] The provision of the law of 1824 requiring a certificate as to the teacher's qualifications, "particularly as respects his knowledge of the English language, writing and arithmetic,"[2] seems to lead to the conclusion that these subjects, and only these, were required to be taught. But in general the authority to determine in what branches instruction should be given was left to the district meeting of the patrons, and after 1843 to the district trustees.[3]

The comprehensive school law of 1852 did not designate any branches which were required to be taught. Three years later the school meeting was empowered to determine

[1] *Laws*, 1818–9, pp. 57–59.

[2] *Rev. Stat.*, 1824, p. 384. See also page 85 above.

[3] *Rev. Stat.*, 1843, p. 314.

that matter.[1] The law of 1865 for the first time specifically declared the subjects in which instruction was compulsory.[2] In 1873 the school meeting was again given power to determine what branches, in addition to the common branches, should be taught; and the trustee was required to furnish the instruction requested.[3]

Statutes might designate the required branches and make the laws mandatory, but such legislation would not establish a graded school system so long as there existed no classification in the schools. In the early days no effort was made to carry the pupils regularly through a course of study. Each teacher managed his own school as he saw fit, riding his own "hobbies"—one emphasizing arithmetic, another geography and another orthography. The attempts to grade schools were, naturally, first made in private academies in cities or towns.

The school law of 1852 authorized township boards to "establish graded schools or a modification thereof" where practicable and convenient, and "so classify the children of the township as to secure to all equitable participation in the advantages thereof."[4] No substantial change was made in

[1] *Laws*, 1855, pp. 176, 181. The use of the English language was required, but "other languages" (meaning German) might be taught "as a branch of education."

[2] It provided that "the common schools of the State shall be taught in the English language, and the trustees shall provide to have orthography, reading, writing, geography, arithmetic, English grammar and good behavior, and such other branches of learning and other languages as the advancement of the pupils may require and the trustees from time to time direct." *Laws*, 1865, p. 32. Four years later physiology and the history of the United States were added to the curriculum; and German was required, in case the parents or guardians of twenty-five or more children attending the school should demand it. *Laws, Spec. Sess.*, 1869, p. 40. In 1895 the curriculum was supplemented by the addition of "the nature of alcoholic drinks and narcotics and their effect upon the human system." *Laws*, 1895, p. 375.

[3] *Laws*, 1873, p. 68.

[4] *Rev. Stat.*, 1852, i, p. 442.

this law until 1861. In that year an act empowered boards to provide for a central school for the instruction of the more advanced pupils promoted from the primary schools of the township.[1] In the few townships in which this was done, it tended to make the course of study in the primary grades more uniform and regular and gave a unity to all the schools of the township. The chief obstacles in the way were the segregation of the population and the large expense for the benefit of a few pupils. These difficulties were in part obviated by enactments in 1873, empowering city trustees to employ superintendents and the trustees of two or more townships to combine and establish joint graded schools.[2] Out of these provisions and under the direction of the Department of Education have developed the district graded school, the township graded school, the union high school and the township high school.

The State Board of Education after a careful consideration of the subject of a uniform course of study, reported in 1872 that they were "unable to prescribe definitely any course of study for ungraded schools" because of the "diversity of conditions."[3] They did, however, make some recommendations in regard to the elementary branches. The State Superintendent of Public Instruction reported in 1874, that twenty-six counties had adopted uniform courses throughout the townships. This progress was due in large measure to the suggestions of the county boards of education in the respective counties.

For ten years this question was the chief topic of discussion in the reports of local and State school officers, and in the sessions of the associations of teachers and of county superintendents. A number of conferences between com-

[1] *Laws, Reg. Sess.*, 1861, pp. 70–1.

[2] *Laws*, 1873, pp. 74–5.

[3] *Indiana School Journal*, xvii, p. 490.

mittees from such organizations and the State Board of Education were held. As a result of all this investigation and consultation, the "Convention of County Superintendents" adopted, in 1884, a standard course of study covering a period of eight years, of six or seven months' duration.[1] They arranged the statutory "eight branches"[2] in a course of study, assigning to each subject its appropriate place and prescribing the time and order in which each should be taken up. Within a few years the boards of education in more than half of the counties had adopted the prescribed course. Through a union of effort on the part of county and city superintendents and the State Board of Education, a uniform course of study was prepared in 1890 for the district, graded and non-commissioned high schools of the State.[3]

This course is followed in practically all the counties of the State, although the Department of Education has no authority to enforce its use. Among the people there was not unanimous approval of this policy. Not until the Supreme Court had declared that "the separation of pupils into different schools or departments according to age and acquirements, is not an abridgment of their rights,"[4] was there acquiescence in the system.

It was still felt that there was need of a State manual which would give uniform instructions and suggestions to teachers in respect to the best methods of carrying out the course of study. Almost every county had its own manual, and these varied greatly in points of merit.[5] In 1892 the

[1] *Bien. Rep't Supt.* Holcombe for 1883–4, p. 102.

[2] See page 94 above, foot note 2.

[3] *Bien. Rep't State Supt.* Vories for 1891–2, p. 7.

[4] Corey *v.* Carter, 48 *Ind. Rep'ts*, 360; State *v.* Grubb, 85 *Ind. Rep'ts*, 213; State *v.* Gray, 93 *Ind. Rep'ts*, 303.

[5] *Bien. Rep't Supt. Pub. Instr.* for 1893–4, p. 8.

Association of County Superintendents authorized the appointment of a committee of persons having large and successful experience in the various schools, to prepare such an aid to teachers. The result of the experiment was so generally gratifying that a similar manual has been issued from that time to the present, prepared since 1894 in the office of the State Superintendent. Its use is not obligatory.

The publication of a State manual led to a practically unanimous call for a series of bi-monthly questions upon the work covered during the previous two months of study. Such questions were prepared and distributed. "The State manual, uniform course of study, uniform directions and suggestions and uniform bi-monthly questions have unified the district school work and in fact the whole work as it was never unified before." [1]

In 1883 a committee, composed of representatives of the Convention of County Superintendents and of the State Board of Education, was appointed to prepare lists of questions to be furnished county superintendents for the examination of candidates for graduation from the district schools.[2] Since then the lists have been regularly prepared and graduating exercises usually held under the supervision of the county superintendent. "No greater impetus," it has been said, "has been given to the work of district schools than that which has attended the introduction of this feature. Janus-like, it looks both ways—forward and backward. Backward over the entire school course, and necessitates efficiency at every point. It is destined to work a revolution, in that it strengthens the work all along the line. It secures better instruction, better gradation, and closer supervision. It looks forward to the high school, to which its diploma is a ticket of admission. It thus unites the district school and

[1] *Bien. Rep't State Supt.* Vories for 1893–4, pp. 9–11.

[2] *Ibid.*, for 1895–6, pp. 103–4.

the high school and as it marks a degree of success it is an incentive to good."[1] By an act of 1899 the county superintendent is required to provide for the examination of all applicants for graduation from the common schools or high schools not employing a superintendent.[2]

The State Board of Education early recognized the position of the State University in the school system and saw how it could be used directly to raise the standard of the high schools, and indirectly to promote the advancement of the common schools. In 1873 the Board of Trustees of the University agreed to receive without further examination applicants who presented certificates from certain high schools designated by the State Board of Education. At the same time the Trustees fixed the minimum standard of admission.[3] Two years later a similar arrangement was made with Purdue University. In 1888 the State Board ordered that all commissioned high schools be visited by committees of the Board; "that the present list be modified by the reports of such visitors," and that thereafter no commission be granted except upon the recommendation of a member of the Board after an official visit to the high school. This policy has had an excellent influence upon the graded schools of the State, stimulating many cities and towns to extend their courses of study in order to secure the standing which a commission gives.[4] The number of commissioned high schools has increased from 15, in 1873, to 176 in 1902. For several years fruitless attempts were made to secure a satisfactory uniform course of study for all the high schools. The State Board in 1889 suggested two courses for commissioned high schools—one, prescribing a minimum three years' course, the least upon which a com-

[1] Boone, *op. cit.*, p. 290.

[2] *Laws*, 1899, p. 242.

[3] *Bien. Rep't State Supt. Pub. Instr.* for 1873–4, p. 108.

[4] *Ibid.*, for 1885–6, p. 84.

mission would be granted; the other, a full four years' course.

This uniformity now makes it possible for pupils to pass from one grade to the next higher on the certificate of the proper officer; so that they may without entrance examination go from the district schools to the Indiana State Normal School, Indiana University, Purdue University or other institutions for higher education which may honor the certificates from the State system.[1] This has been accomplished almost entirely without the aid of positive enactments. It was not until 1899 that the first act was passed which recognized high schools as a part of the system and gave them a legal existence.[2] We have here a notable instance of a natural development under the fostering care of a State department.

IV. *The Adoption of Text Books.* "Uniformity of text-books is a matter of no small moment to the purses of the parents and the progress of the pupils."[3] Indiana has tried four methods of dealing with this subject. The policy prior to 1852 was to leave the selection and introduction of text-books entirely to the local officers and teachers. The consequent evils of want of uniformity, frequent change and heavy expense may be readily imagined.[4]

By the law of 1852 it was made the duty of the State Superintendent of Public Instruction to submit to the State Board a list of text-books; and the State Board of Educa-

[1] *Bien. Rep't State Supt. Pub. Instr.* for 1873–4, p. 12.

[2] *Laws*, 1899, pp. 424–5.

[3] *Rep't Supt. Com. Schools*, 1855, p. 68.

[4] The Superintendent of Common Schools in his report for 1845 exhibited the condition of affairs in the following words: "In half a dozen different schools you might not find any two of the teachers agreeing in their preference for books, and in each school you might find three or four kinds of publications all designed for the same purpose." *Doc. Journ.*, 1845–6, Pt. ii, pp. 103–5.

tion was required to promote the "interests of education . . . by the introduction of uniform school-books."[1] While the law seemed imperative there was no provision by which the Board could compel the local authorities to use the books recommended. According to their interpretation the law gave them merely advisory power.[2] Lists of books were prepared and submitted and were generally approved.[3] The law of 1861 extending the powers of the county examiners required them to "see to the introduction of the authorized text-books into their schools."[4] This would have given practical uniformity, had it not been amended a few months later by giving the State Board of Education merely the right of "approval of a uniform system of text-books."[5]

The method of "State recommendation" was a great improvement over the old way of local selection, but there was by no means a general uniformity. In the enumeration of the powers of the State Board in 1865, the authority to recommend text-books is not found.[6] There was a return to the first method of selection by trustees, teachers or patrons. This unsatisfactory condition continued for eight years.

In deliberating upon the question of uniformity of text-books there were three chief points to consider; the territory (State, county or other unit) throughout which uniformity should prevail; the period during which no change should be made; the authority (State or local) by which uniformity should be enforced. In the next experi-

[1] See page 79 above. *Rev. Stat.*, 1852, i, 457. Compare Mr. Dumont's recommendations, p. 75 above.

[2] *Rep'ts Supt. Pub. Instr.* for 1852, *Doc. Journ.*, 1852, Pt. ii, p. 271; 1855, *Doc. Journ.*, p. 268.

[3] *Rep't. Supt. Pub. Instr.* for 1853, *Doc. Journ.*, 1853–4, pp. 14–15.

[4] *Laws, Reg. Sess.*, 1861, p. 78. [5] *Laws, Special Sess.*, 1861, p. 26.

[6] *Laws*, 1865, pp. 34–5.

ment tried we find the county as the territorial unit; three years the minimum time limit; and a local board the authority for enforcement. The law of 1873 organizing the county Board of Education[1] gave that body authority (except in cities) to adopt text-books and each township was to conform, as nearly as practicable, to its action; but no text-book adopted by the board was permitted to be changed within three years except by a unanimous vote.[2] This law resulted in the adoption of books of a higher standard, but failed in part to accomplish its purpose because the exclusive use of the adopted books was not enjoined.[3]

There was a growing sentiment that text-books should be furnished more cheaply and should be uniform throughout the whole State. Various suggestions and recommendations were made from time to time by persons interested in education, and in 1889 the fourth experiment was made. It was a decided step towards centralization.

The State Board of Education was constituted a Board of Text-book Commissioners for the purpose of making a selection or procuring the compilation of a series of text-books for use in the common schools.[4] Amendments were made to the law in 1891, 1893 and 1901, which corrected minor defects, added other books to the series, and exacted stricter accountability of those who handled the books and money.[5] The present law empowers the Board to enter into five-year contracts with publishers, under which they agree to furnish books at the maximum prices stipulated in the

[1] See page 84 above.

[2] *Laws*, 1873, pp. 78–9. The minimum period four years later was fixed at six years. *Laws, Reg. Sess.*, 1877, p. 122.

[3] *Bien. Rep't State Supt.* Smart for 1875–6, p. 140.

[4] *Laws*, 1889, pp. 74–81.

[5] *Laws*, 1891, pp. 99–102; 1893, pp. 166, 172–4; 1901, p. 489.

law. In the distribution of the books, the township trustees and school boards make requisitions upon the county superintendent for the books required in their respective corporations. The county superintendent makes requisitions upon the State Superintendent of Public Instruction, who, in turn, forwards them to the publishers. The latter ship the books directly to the county superintendents, from whom the trustees or school boards procure them. These officers, either directly or through dealers, supply patrons with the books at the fixed prices. The trustees make quarterly reports of sales to the county superintendents and pay to them all moneys received. The county superintendent makes a full and complete report to the contractor and pays over the receipts. It is the duty of trustees and school boards to furnish the necessary books, so far as they have been adopted by the State, to the poor or indigent children of their respective corporations who desire to attend school and who otherwise would be unable to do so.

The constitutionality of the law was disputed. But the Supreme Court upheld it, declaring: "The Legislature has the authority to prescribe the course of study and the system of instruction that shall be pursued and adopted, as well as the books which shall be used. . . . It may also declare how the books shall be obtained and distributed."[1] By virtue of its merit the law has now won almost universal approval. It may not be unreasonable to expect that the next change in this direction will be a system of free text-books.[2]

V. *Length of the School Term* "A general and uniform system of common schools, wherein tuition shall be without

[1] 122 *Ind. Rep'ts*, p. 462.

[2] *Messages of Governor* Hovey, *House Journ.*, 1889, pp. 67–69; *Governor* Chase, *House Journ.*, 1893, p. 24; also *House Bill*, *House Journ.*, 1881, pp. 146, 520.

charge and equally open to all," can not be had without a school year approximately uniform in length throughout the State. How slow the approach to this condition has been, will be shown in the following paragraphs.

The first general school law gave to the "inhabitants [patrons] of the school district" the authority to determine whether or not they should have a school, and how long the term should be extended (if at all) beyond the required three months.[1] This was repeated in subsequent laws for twenty-five years.

A drifting towards an equality in the length of the school year within the township was shown in the school law of 1849. The township trustees were required to provide "as many free schools as may be required for all attending scholars in such township;" and it was made their duty to make such arrangements that all the schools of their township should be taught an equal length of time (for at least three months), "without regard to the diversity in the number of scholars attending the respective schools."[2] But as this law went into force in those counties only which adopted it,[3] complete equality of school privileges was not attained.

The school law of 1852 made no mention of a minimum term nor of the equality of the school year among the schools of a township. In 1855 the provision of the law of 1849, quoted above, was in substance re-enacted and made mandatory.[4] The law was not at first strictly enforced. Three years after its passage we find the State Superintendent saying: "In the same township some schools are taught in summer, some in autumn, and some in winter. Some are kept one month, some two months and some three months."[5]

[1] See page 29 above. [2] *Laws*, 1848–9, p. 125. [3] See page 66 above.

[4] *Laws*, 1855, p. 166.

[5] *An. Rep't State Supt. Pub. Instr.*, 1858, *Doc. Journ.*, 1858–9, Pt. ii, p. 295.

Gradually equality in the length of the school year within the township was secured. Progress towards uniformity throughout the State was slower. It was promoted, however, by the State adoption of text-books, the acceptance of a uniform course of study and the use of State manuals. At length, in 1899, a minimum term for the whole State was prescribed by law. The school trustees of each school corporation are now required to maintain a term of school of at least six months in duration, and to authorize a local tuition levy which, with the State's tuition revenue, will be sufficient to do so.[1] No authority is given to the central school officers to withhold any part of the State tuition revenue for failure to make the levy. The method of compulsion would doubtless be found in a writ of *mandamus*.

VI. *The Training of Teachers.* (a) *County Institutes.* For a quarter of a century before there was any recognition in the law of the teachers' institute, the leading educators had seen in this a means for the instruction of teachers and had put it to a practical test in many counties of the State.[2] Frequent recommendations[3] of State officers and other progressive school men had been made for the encouragement of such institutes. State Superintendent Mills in urging the importance of this matter in 1856, declared: "The State has not expended a dime to improve her teachers, nor appropriated a dollar for the intellectual and moral development and culture of those who are to train her rising generation."[4]

A law of 1865 was the first to require examiners to hold, or cause to be held, teachers' institutes once a year. It authorized the appropriation of county funds to defray part

[1] *Laws*, 1899, p. 425,

[2] Boone, *op. cit.*, pp. 393, 394.

[3] *An. Rep't State Supt. Pub. Instr., Doc. Journ.*, 1854–5, pp. 734–5; also Boone, *op. cit.*, p. 395.

[4] *Ibid.*, 1856, *Doc. Journ., 39 Sess.*, Pt. i, p. 467.

of the expenses of such institutes.[1] In the first year of the operation of the law 58 institutes were held, in which 3,533 teachers received instruction. In a few counties the institutes were wholly neglected in spite of the fact that it was made obligatory upon the county examiner to hold them. Superintendent Hopkins recommended that attendance upon an institute five days in the year be made one of the conditions upon which licenses to teach should be granted.[2]

There went on during the decade an earnest discussion of the purpose, the nature and the best methods of institute work. In 1881 the State Board of Education, upon the request of the Convention of County Superintendents, had prepared an order of exercises and a suggestive outline of subjects. This was received with favor and others were afterwards prepared under the direction of the State Superintendent of Public Instruction.[3] "The general effect of the use of the outlines was to unify the work throughout most counties, to increase relatively the amount of professional work, to improve the quality of educational discussion, correcting false doctrine, rationalizing the conceptions of education and the school, and directing the study and thought of teachers into more fruitful lines."[4] They also helped to prepare the way for the adoption of a State course of study. In 1901 the payment of teachers for attending county institutes was authorized by law,[5] though attendance is not yet compulsory.

The average enrollment of these institutes has increased from thirty-eight in a county in 1865, to more than one hundred and seventy-four in 1895.[6] That they have exerted

[1] *Laws, Reg. Sess.*, 1865, pp. 35–36.

[2] *Bien. Rep't*, 1871–2, p. 57.

[3] *Bien Rep'ts of State Supt. Pub. Instr.* for 1883–4, p. 26; 1885–6, pp. 31–2.

[4] Boone, p. 397.

[5] *Laws*, 1901, p. 561.

[6] *Bien Rep't. State Supt. Pub. Instr.*, 1897–8, p. 317.

a wide influence cannot be questioned. Superintendent Hoss declared that they had resulted in the improvement of teachers; giving them better methods, clearer views of the work to be done, increased fondness for and devotion to work; awakening aspirations for higher attainments and greater usefulness; leading to the adoption of plans for associated and organized effort for education; and arousing a higher educational sentiment in the community.[1] It is believed by competent critics that institutes could be made even more serviceable by placing their management more fully under the control of the State Board of Education and giving that body authority to certify to the county superintendents the fitness of persons to teach in them.[2]

(b) *Township Institutes.* There were a few voluntary attempts at township institutes prior to any statutory provision for them. In 1873 it was enacted that "at least one Saturday in each month during which the public schools may be in progress, shall be devoted to township institutes or model schools for the improvement of teachers, and two Saturdays may be appropriated at the discretion of the township trustee of any township." Attendance was compulsory under penalty of forfeiture of one day's wages.[3] In general these institutes were of great value; but there were numerous instances of worthless sessions due to indifference, incompetency and misdirection.

In 1884 State Superintendent Holcomb appointed a committee, which, under his direction, prepared an outline of work for use in township institutes.[4] Subsequent outlines were prepared, usually, by committees appointed by the County Superintendents' Convention. In 1896 that organization by resolution intrusted their preparation to the

[1] *Rien. Rep't State Supt. Pub. Instr.*, 1865–6, *Doc. Journ.*, 1865, Pt. i, p. 315.

[2] *Ibid.*, 1887–8, p. 9; 1895–6, p. 321.

[3] *Laws*, 1873, p. 79. [4] *Rien. Rep't State Supt. Pub. Instr.*, 1883–4, p. 90 ff

Department of Public Instruction. By the use of these outlines the work has been unified and elevated and greater interest has been shown by school officers, teachers and patrons.[1] In 1889 compensation for attendance at township institutes was authorized.[2]

(c) *State Normal School.* The State Normal School, as well as the teachers' institutes, was the outgrowth of the conviction that the State should provide some special means for the more thorough education of its teachers. With the exception of the ineffective attempts to establish a Normal and Model School in connection with the State University,[3] no legislative action in this direction was taken until 1865. For nearly twenty years this subject had been discussed with considerable spirit in the "Indiana School Journal," the "Indianapolis Journal," educational associations and reports of State officials.[4]

In 1865 the State Normal was established under the control of a board appointed by the Governor with the approval of the Senate. Funds for its support were appropriated out of the State school revenue for tuition.[5] The institution began its career in 1870 without the confidence and support of the public. The entire number attending the first term was only forty. That it has justified its existence and won the approval of the people is shown by the gradual increase in the attendance, which reached 1,672 in the year 1899–1900. The only supervision which the central school officials have over this institution, is the right of the State Board of Education to appoint a board of visitors (three) who are required to make a careful inspection of the school and report to the State Board.[6]

[1] *Bien. Rep't State Supt.* Geeting, 1895–6, pp. 336–7. [2] *Laws*, 1889, p. 67.

[3] Boone, pp. 382–4.

[4] *An. Rep'ts Supt. Pub. Instr.*, 1852; 1856 in *Doc. Journ.*, Pt. i, pp. 467–8; 1859; 1860, *Doc. Journ.*, 1860–1, Pt. ii, pp. 336–9; also Boone, pp. 387–8.

[5] *Laws, Spec. Sess.*, pp. 140–142. [6] *Laws*, 1873, p. 199.

(d) *The Teachers' Reading Circle.* Another agency, unofficial in its origin, for disciplining the mind, broadening the sympathy and ripening the culture of the teacher is the "Teachers' Reading Circle." This organization was effected in 1884 by a committee of the State Teachers' Association. A committee appointed by that Association together with the State Superintendent and his Deputy constitute the governing board of the Reading Circle. The Deputy Superintendent has usually acted as secretary; and hence, the connection with the Department of Education has always been intimate. The questions upon the science of teaching used in the examination of teachers are based upon the professional work of the reading circles. The director of the local circle is the county superintendent, and the success of this movement has been due to the voluntary services which these officers have rendered without compensation. They conduct the annual examinations upon questions prepared by the central board upon the year's work. In 1885 the State Board of Education ordered "that the Reading Circle examinations in the Science of Teaching be accepted by the County Superintendents in place of the county examination on that subject, and that the average of their four successive yearly examinations in the Science of Teaching be accepted by the State Board in the examination for State Certificates."[1] In 1896 a similar privilege in regard to the examinations in the "general culture" book was granted.[2] The outlines of the year's work are issued in connection with the outlines for the township institutes; and it is generally at these meetings that the subject-matter of the reading circle work is discussed.

By means of this official recognition of the Reading Circle it has secured a prestige which it could not have attained otherwise. The number of members has increased from

[1] *Bien. Rep't State Supt. Pub. Instr.*, 1895–6, p. 478. [2] *Ibid.*, p. 478.

1,600 in 1884–5, to 14,379 in 1899–1900, more than 92 per cent. of the total number of teachers employed.[1] "The Circle has wielded a conscious influence on the very life of the school, supporting and supplementing all other school agencies, and itself becoming an important and permanent institution." [2]

VII. *Compulsory Education.* For more than twenty-five years the subject of compulsory attendance has from time to time received attention in the reports of the Superintendents of Public Instruction,[3] in the recommendations of educational associations, in the messages of Governors and in the reports of legislative committees.[4] Finally, in 1897,[5] the Legislature gave its sanction to compulsory education. The law was amended in 1899 [6] and again in 1901.[7] As it stands now the act requires that all children between the ages of seven and fourteen be sent to school "for a term or period not less than that of the public schools of the school corporation where the child or children reside." The necessary books and clothing must be furnished to poor children by the proper school authorities.

The enforcement of the act is entrusted to one or more local truant officers in each county. Under the first law the local officer received his appointment from a board of truancy consisting of the county superintendent, the Secretary of the Board of State Charities and one member of the State Board of Education designated for that purpose. The method of appointment proved unsatisfactory,[8] and a change was made in 1901. While the State Board of Truancy still

[1] *Bien. Rep't Supt. Pub. Instr.*, 1899–1900, pp. 780–1.

[2] *Ibid.*, 1895–6, pp. 104–5. [3] *Ibid.*, 1869–70; 1871–2; 1887–8; 1889–90.

[4] *House Journ.*, 1887, p. 472; 1891, pp. 69, 151; 1895, p. 507. *Sen. Journ.*, 1891, p. 651; 1893, p. 490.

[5] *Laws*, 1897, pp. 248–250. [6] *Laws*, 1899, pp. 547–551. [7] *Laws*, 1901, pp. 470–3.

[8] *Report of Board of State Charities*, 1899, p. 22.

retained a general supervision over the administration of the law, the county boards of education were constituted local boards of truancy. It is their duty to appoint one truant officer in each county to see that the act is enforced. Each city having a school enumeration of 5,000 or more children,[1] may in the discretion of the county board of truancy constitute a separate district for the administration of the act. In such cases the school board of the city appoints the truant officers in proportion to the school enumeration.[2] School commissioners, trustees and boards of trustees are empowered to maintain either within or without the corporate limits a separate school for incorrigible and truant children, who may be compelled to attend such school for an indeterminate time.[3] Children adjudged "confirmed truants" by the truant officer and the county superintendent or the city superintendent, may be sentenced by the Judge of the Circuit Court to the Reform School for boys or the Industrial School for girls.

The operation of the law has been satisfactory and its results have been gratifying.[4] The average daily attendance

[1] Two or more cities or towns may combine for this purpose.

[2] The number cannot exceed five.

[3] Indianapolis is the only city which has yet established a school of this kind.

[4] The following table is taken from the reports of the Board of State Charities for 1898 and 1899:

	1898.	1899.
Number of truant officers	237	194
Number of pupils brought into school through the operation of the law	21,447	19,160
Number who remained in school longer than twelve weeks*.	13,565	13,703
Number who received aid	7,634	7,380
Total cost of assistance given	$15,806	$15,414
Number of prosecutions		113
Number of prosecutions successful		98
Cost of administering the law—Salaries.	35,544.61	28,028.00
Assistance	15,806.43	15,414.54
	$51,351.04	$43,442.54

Rep'ts Bd. State Charities, 1898, p. 70; 1899, pp. 151–2.

* The period of attendance required under the law prior to 1901.

at the public schools was 32,089 larger in 1898 than in 1897. From this it may be inferred that the law was obeyed in many cases without the services of the truant officer. It remains to be seen whether the law will be equally and satisfactorily enforced in all counties in the absence of a more centralized administration such as is found in Connecticut.[1]

VIII. *Libraries.* One of the means, recognized in law and practice, for promoting the general diffusion of knowledge and learning is the public library. Prior to 1852 ineffective attempts were made to establish county libraries[2] and school district libraries.[3] Library associations were organized, but few county and no district libraries were ever actually opened. Those that were established were, with rare exceptions, neglected and lost or consolidated with other libraries. Such things were luxuries, and even school comforts were wanting in the districts.[4]

(*a*) *Township Libraries.* It was a common opinion that the failure of the plans for county and district libraries was due in part to the lack of advice and control by some competent central authority. The outcome of this impression was the legislation in 1852, imposing for two years[5] a State tax for the support of township school libraries. This sum was expended for the purchase of books by the State Superintendent under regulations adopted by the State Board of Education. The libraries were distributed to the counties according to population.[6] Township trustees were

[1] Webster, *op. cit.*, pp. 43–46.

[2] *Constitution of* 1816, art. ix, sect. 5; *Revised Stat.*, 1824, pp. 258–60; *Ibid.*, 1838, p. 401; *Laws*, 1846–7, pp. 103–4.

[3] *Laws*, 1836–7, p. 53.

[4] Boone, *op. cit.*, pp. 337 and 339.

[5] In 1855 another levy was made. *Laws*, 1855, pp. 179–180.

[6] Later the basis of distribution was the school enumeration, and still later a mixed basis was adopted.

responsible for their care and could not sell or alienate them for any cause whatever. The trustees were "accountable for the preservation of said libraries"; but no method of enforcing that accountability was even suggested.[1]

The selection and purchase of the books by the Board of Education was a wise plan from the standpoint either of economy or of education. From the three assessments there were realized about $276,000 and nearly 700 libraries and over 220,000 volumes were sent out at the first distribution.[2] The benefits derived from these centers of culture were no doubt very great. But many books were lost or stolen and the number of readings decreased. A subsequent levy was made in 1865 to replenish the libraries, and the township trustee was made personally accountable for the preservation of the books and was required to report annually to the county examiner the number of books in his charge.[3]

For twenty years appreciation of the township library seemed on the decline, and there was a continual loss of books. Recently there has been a revival of interest in the subject, and efforts to increase their number and extend their influence have been made.[4] Under a law passed in 1899 it is the duty of the trustee, after an election which authorizes such action, to levy a tax for the establishment and support of a township library. Its management is placed in charge of a township library board composed of the school township trustee and two residents of the township appointed by the Judge of the Circuit Court (one of whom must be a woman). Before the purchase of any books the township library board must consult the Public

[1] *Rev. Stat.*, 1852, i, p. 456.

[2] *An. Rept's Supt. Pub. Instr.*, 1855, pp. 125, 258; 1856, *Doc. Journ.*, p. 471, 1857.

[3] *Laws*, 1865, p. 31.

[4] *Laws*, 1885, p. 9; 1895, p. 240; 1899, p. 228.

Library Commission.[1] Those interested in this agency for culture and education are confident that these provisions will insure the exercise of better judgment in the selection of books, and greater attention to competency in the superintendence of the libraries.

(*b*) *Traveling Libraries.* The Public Library Commission mentioned above is composed of three members appointed by the Governor who serve without compensation for a term of four years. The State Librarian is *ex officio* secretary of the Commission. They have the control and management of the traveling libraries; prepare and furnish lists of books with prices suitable for public libraries; and furnish information or advice as to the organization, maintenance or administration of any library in the State when requested to do so by the librarian or trustees.[2] The first biennial report of the Commission shows a satisfactory beginning of the experiment.[3]

(*c*) *Libraries in Cities and Towns.* In 1843 provision was made for the incorporation of private libraries in cities, towns or villages. These received no public aid and were subject to no official control.[4] In 1873 cities were given authority to take stock in such corporations and to levy a tax in order to pay for it.[5]

In 1881[6] in any city having ten thousand inhabitants or more, the board having charge of the public schools was given discretionary power "to establish a free public library in connection with the common schools," to provide for its care and government and to levy a tax for the support and maintenance of it. Two years later the benefits of the law

[1] *Laws*, 1899, pp. 136–7. See also section (b) below.

[2] *Laws*, 1899, pp. 134–136.

[3] *Report*, 1899–1900, pp. v and xiv.

[4] *Rev. Stat.*, 1843, p. 404.

[5] *Laws*, 1873, p. 176.

[6] *Rev. Stat.*, 1881, sects. 4524–5.

were extended to all incorporated towns and cities.[1] The number of libraries organized under these laws was not great. The law of 1901 transferred the power to make the tax levy to the common councils of cities and the town boards of towns and made it mandatory if a certain sum of money is raised by popular subscription. The library is under the management of a board of seven persons, three of whom are appointed by the Judge of the Circuit Court, two by the board of school trustees and two by the common council or town board as the case may be. The members are subject at any time, for cause shown, to removal by the respective appointing powers.[2]

(*d*) *The State Library.* The State Library is an institution which is being made of more value to the general public and to investigators. It was established by law in 1825,[3] largely for the purpose of collecting and preserving the State publications. For this reason it was placed under the authority of the Secretary of State. This officer, being occupied chiefly with other matters, gave it little attention and its growth was exceedingly slow. In 1841 the office of State Librarian was created, and that officer was thereafter elected by the General Assembly on joint ballot for a term of three years.[4] Under this law the Librarian was, with a few notable exceptions, appointed in reward for some political service or because of favoritism and not because of merit and competency. Hence little progress was made.

In 1895 the State Board of Education was constituted the State Library Board and given authority to elect a State Librarian for a term of two years, or until his successor is elected. The State Library Board has power to remove for cause, at any time, the State Librarian or any of his assist-

[1] *Laws*, 1883, p. 209. [2] *Ibid.*, 1901, pp. 81–86. [3] *Ibid.*, 1824–5, pp. 47–9,

[4] *Laws*, 1841, pp. 114–119. In 1852 the term was reduced to two years. *Rev. Stat.*, 1852, p. 348.

ants.[1] The good effect of these provisions is already quite noticeable.

This brief survey of the educational system shows that the history of its development may be roughly separated into two periods—one of decentralization, prior to 1843, and one of centralization, since that time. The discussions during the six years preceding that date reveal evidences of dissatisfaction with the system, and a decided drift of public opinion towards centralization. It is not to be understood that a well formulated scheme of central control was adopted in 1843. But the making of the State Treasurer the Superintendent of Common Schools was the beginning of the movement which has been retarded only occasionally, when the progress has been too rapid to secure popular approval. As soon as one experiment had been justified by the results, another forward step was taken. As in the case of most political institutions which are successful, the present system is not one contrived by *a priori* theorists, but one which is an historical product. It has grown by the application of wisdom and common sense to the practical problems of education.

5. SCHOOL ADMINISTRATION AT THE PRESENT TIME.[2]

I. *Local Administration.* (*a*) *The District Meeting and the Director.* The statutes still recognize the legal existence of the district meeting. All taxpayers of the school district (except married women and minors) who have been listed as parents, guardians or heads of families, are entitled to assemble annually on the first Saturday in October and elect one of their number director of the school. They have

[1] *Laws*, 1895, pp. 234–5.

[2] In presenting the leading features of the present administration of the common schools it will be necessary in some cases to repeat in brief the substance of statements already made.

authority also to decide what branches, in addition to those prescribed by law, shall be taught, and the length of the school term beyond the period required by law. Subject to the "sound discretion" of the township trustee, they may direct repairs of the school-house and may petition the trustee for the sale or removal of the school-house, for the erection of a new one, or upon any other subject connected therewith. In case of a failure to elect, the township trustee has power to appoint a director.[1] In practice this seems to be the most common procedure. The district meeting in many parts of the State has become obsolete.

The director presides at school meetings and records their proceedings. He is the organ of communication between the inhabitants and the township trustee. He is charged with the care of the school-house and property. He visits and inspects the school and may exclude refractory pupils, subject to appeal to the trustee.[2]

(*b*) *The School Township.* The district meeting has no corporate existence. The real primary unit in the rural districts is the school township; in the urban districts, the school town or school city. "Each civil township and each incorporated town or city in the several counties is declared a distinct municipal corporation for school purposes."[3] The trustee of the civil township is also trustee, treasurer and clerk of the school township. He is elected by the voters of the township for a term of four years.[4]

The trustee has extensive authority in school matters. "The voters and taxpayers have but little, if indeed any, voice or part in the control of the details of educational affairs."[5] He receives the school revenue apportioned to

[1] *School Law* (ed. 1897), sects. 4498–9.

[2] *Ibid.*, sects. 4503–4506.

[3] *Ibid.*, sect. 4438; *Laws*, 1897, p. 64.

[4] *Laws*, 1899, p. 64.

[5] Wallis *v.* Johnson Township, 75 *Ind. Reports*, 374.

his township, keeps it separate from the funds of the civil township, applies it to the purposes specified, and is required to render an annual account of his receipts and expenditures to the township advisory board.[1] He employs teachers;[2] establishes and locates a sufficient number of schools; provides suitable houses, furniture and apparatus; and has the care and management of the school property.[3] He may either singly or jointly with another trustee establish a high school.[4] He has considerable discretion in respect to the consolidation of schools.[5] He is required annually to make elaborate statistical reports to the county superintendent.[6] It is his duty, either in person or by deputy, to take an annual enumeration of all unmarried persons between the ages of six and twenty-one years, resident in his township. This list includes the names of parents or guardians, and designates the township in which each resides.[7] For failure to do his duty in respect to making the various reports, his township suffers a diminution of its apportionment of the State tuition revenue.[8] In appeals from the decisions of directors, excluding pupils, his decisions are final.[9] He has the care and custody of the lands belonging to the congressional township fund and, with the consent of the voters of the township, may lease or sell them.[10] The office is obligatory, and the trustee is subject to removal by the county commissioners for fraud.[11] The tax levy of the township for school purposes is made by the township advisory board.[12]

[1] *School Law* (ed. 1897), sects. 4441, 4442; and *Laws*, 1899, pp. 155–6.

[2] For exceptions see page 38 above.

[3] *School Law* (ed. 1897), sect. 4444. [4] *Laws*, 1901, pp. 514–5.

[5] *Laws*, 1901, pp. 159, 437; also page 39 above.

[6] *School Law* (ed. 1897), sect. 4450. [7] *Ibid.*, sect. 4472

[8] See page 71 above. [9] *School Law* (ed. 1897), sect. 4506.

[10] *Ibid.*, sect. 4328–9. [11] *Ibid.*, sects. 4453, 4456. [12] *Laws*, 1899, p. 151

Viewed from the present, it appears that the schools would have been benefited to a still greater degree if the educational functions of the township had been separated from the civil functions and assigned to a board chosen because of its interest in education and its professional qualifications. Such a recommendation has been made repeatedly by the most eminent educators. This may be one of the progressive steps of the near future.

(*c*) *Cities and Incorporated Towns.* In cities and incorporated towns the schools are under the management of a board of three school trustees,[1] elected in cities by the common council,[2] in towns by the board of town trustees.[3] These corporations are distinct from the civil corporations,[4] and their actions are not subject to review by the civil authorities. Their powers and duties are, in general, similar to those of the township trustee.[5] In addition they have authority to establish kindergartens[6] (in cities having a population of 6,000), night schools[7] (in cities having a population of 3,000), manual training schools[8] (in cities having a population of 100,000), and to employ a superintendent[9] for the purpose of supervision and direction of the entire system. Town schools are subject to the authority of the county superintendent;[10] but any city schools having a regularly employed superintendent may be exempted from his authority, provided a written request to that effect be made by the school board of the city.[11]

[1] In Indianapolis a board of five school commissioners has charge of the schools.

[2] In a few of the larger cities a different method is used. See Rawles, W. A., *The Government of the People of the State of Indiana*, 1900, pp. 108–9.

[3] *School Law* (ed. 1897), sect. 4439.

[4] Wright *v.* Stockton, 59 *Ind. Repts.*, 65.

[5] *School Law* (ed. 1897), sects. 4440–4, 4450.

[6] *Laws*, 1901, p. 123.

[7] *School Law* (ed. 1897), sect. 4447 b, 4447 c.

[8] *Ibid.*, 4447 d—4447 f.

[9] *Ibid.*, sect. 4445.

[10] *Ibid.*, sect. 4429.

[11] *aws*, 1899, p. 242.

(*d*) *The County Superintendent.* As the township trustee is the central school authority for the township, so the county superintendent unifies the schools of the county. He is elected by the township trustees for a term of four years, subject to dismissal for cause by the board of commissioners.[1] He has general supervision of the schools of the county, except the city schools. It is his duty to grant teachers' licenses to all applicants when their fitness has been ascertained by examination. He may revoke such licenses for causes specified in the statute. He is required to visit each school annually; to encourage and attend teachers' institutes; to make annual reports to the state superintendent and to the bureau of statistics, embodying the enumeration of children of school age and statistical information relative to the school fund, the condition of school property, and the general progress of education. He acts as the medium of communication between the state superintendent and subordinate school officers and must at all times carry out the orders and instructions of the State Board of Education and the State Superintendent of Public Instruction. It is his duty to make requisition for the textbooks needed in the county and to see that a sufficient number are on hand. He is authorized to inspect the books of county officers having the care of the county school funds and may institute suit to recover moneys due the school fund.[2]

An important part of his work is the hearing of appeals from the decisions of the township trustees. For the purpose of preventing vexatious and expensive litigation the law provides that his decision shall be final in regard to certain enumerated subjects. The law as amended in 1899 declares: "In all controversies of a general nature arising

[1] See page 84 above for qualifications.

[2] *School Law* (ed. 1897), sects. 4424–29, 4431, 4435.

under the school law, the decision of the county superintendent shall first be obtained; and then an appeal, except on local questions relating to the legality of school meetings, establishment of schools, and the location, building, repair, or removal of school-houses, transfer of persons for school purposes, and resignation and dismissal of teachers, may be taken from his decision to the State Superintendent of Public Instruction on a written statement of facts, certified by such county superintendent. Nothing in this act, however, shall be construed so as to change or abridge the jurisdiction of any court in cases arising under the school laws of this State."[1] Attorney-General Baldwin, in an official opinion in respect to the extent of his jurisdiction and the authority of the courts, expounded the law as follows: "Upon any question arising out of the dismissal of a teacher, if the teacher has suffered any damages, he may bring a suit against the township to recover whatever loss he has sustained. The court can only examine whether just cause existed for his dismissal, in order to see if he is entitled to damage for a wrongful dismissal, but cannot reinstate him as a teacher, for as to that the superintendent's decision is final. But on all those questions relating to the government and control of schools and school buildings, and school regulations, such as the establishment of schools, and the location, building, repair, or removal of school-houses, or transfer of persons for school purposes, or even the attachment of a person to a certain school and resignation of teachers, his decision is final, and no action can be maintained in the courts touching the same. This must necessarily be so, for courts cannot undertake the superintendency of school matters."[2]

For a failure to make his reports to the State officers, the

[1] *Laws*, 1899, p. 242.

[2] *School Law* (ed. 1897), p. 192.

county suffers a loss of a part of its State tuition revenue.[1] For immorality, incompetency, or general neglect of duty, or for acting as agent for the sale of any text-book or school supplies, he may be impeached as any other county officer.[2] This necessitates an accusation in writing, an indictment by the grand jury and a trial by jury in a Circuit or Criminal Court.[3] Few cases of removal have occurred. In most counties the office is satisfactorily filled. It is believed by some that better officers would be secured if the appointment were placed in the hands of the Judge of the Circuit Court. The county superintendent is an agent of the State and should not be dependent for his election upon the township trustees who are his subordinates in the administration of school affairs.

Among the State school officials there has been no dissenting voice in the general approval of this office. It was well summed up by State Superintendent Geeting, who said: "No other agency has done so much toward securing such an organization of the public schools as insures the greatest possible benefit from the expenditures made for public education as has this school official."[4] His efficiency, it may be added, has been due in great measure to the vital relation existing between him and the State Superintendent of Public Instruction and the State Board of Education.

(*e*) *The County Board of Education.* The county board of education is an organization designed to represent all the public school interests of the county, those of the district, town and city.[5] Its composition and powers have already been explained sufficiently.[6] Its chief value lies in the fact that it is a representative body of experts, and hence, its advice has great weight.

[1] See page 71 above.

[2] *Laws*, 1899, p. 241.

[3] *Laws*, 1897, pp. 281–2.

[4] *Bien. Rep't* for 1895–6, pp. 444.

[5] *School Law* (ed. 1897), sect. 4436.

[6] See pages 84, 101 above.

II. *The State Administration.* (*a*) *The State Superintendent of Public Instruction.* There are two State authorities in the administration of the common school system, the State Superintendent of Public Instruction and the State Board of Education. The former by virtue of his constitutional office and his statutory powers is properly regarded as the head of the system. He is elected by a popular vote for a term of two years [1] with no limitation upon the number of terms he may serve. His salary is $3,000.[2]

As most of his powers and duties have been already discussed in previous sections of this chapter, it will be sufficient here to enumerate them briefly and consider others not fully treated heretofore. The law charges him with the administration of the system of public instruction; a general superintendence of the business relating to the common schools; and a supervision of the school funds and school revenues. He is required to advise school officers concerning the administration and construction of school laws; to report to the General Assembly biennially, giving an exhibit of school funds and revenues, of statistics, of his labors, of estimates for the following year, and the estimated value of school property. It is his duty to visit each county once during his term and examine the auditor's books to ascertain the amount and safety of the school funds and revenues.[3]

In the apportionment of the school revenue for tuition he has responsible duties. The county auditors report to him semi-annually the amount of revenue for tuition collected and ready for apportionment in their respective counties. He apportions this to the several counties upon the basis of the enumeration of the school children between the ages of six and twenty. He has authority to withhold a portion of

[1] *School Law* (ed. 1897), sect. 4406.

[2] *Laws*, 1901, p. 117.

[3] *School Law* (ed. 1897), sects. 4406–10, 4413, 4420.

the share due to any county for the failure of the county superintendent or the county auditor to make the proper reports.[1] The county auditor makes his apportionment so as to equalize the revenue of the townships.[2]

The State Superintendent may ask county auditors, county superintendents, county treasurers, township trustees, clerks and treasurers to furnish copies of all reports required to be made by them and other information relating to the condition of the school funds, revenues and property of the common schools and the condition and management of the schools which he may deem important. He prepares blanks[3] for the necessary reports and prescribes forms and modes of bookkeeping for county auditors and county treasurers;[4] and he directs the preparation of the blanks for teachers' contracts.[5]

The list of publications sent out from the office of the State Superintendent of Public Instruction includes his Biennial Report, irregular editions of the school law, the State manuals, outlines of township institute work, a program of recitations and study, "arbor" and "bird" day programs (with selections for reading or recitation), suggestions for the study of local history, directories, bulletins and letters.

The duty of the State Superintendent in respect to appeals is not so engrossing as in some other States,[6] because of the jurisdiction of the courts and the large final jurisdiction of the county superintendents.[7] The law allows appeals from the county superintendent in all cases not specified in the clause defining the appellate jurisdiction of that officer. In

[1] *School Law* (ed. 1897), sects. 4477–4486, 4431.

[2] See page 69 above.

[3] Seventeen different "forms" are issued.

[4] *School Law* (ed. 1897), sects. 4414–4416.

[5] *Laws*, 1899, p. 173.

[6] See Webster, W. C., *Recent Centralizing Tendencies in State Educational Administration*, chapter x.

[7] See pages 119–20 above.

regard to the method of procedure the law leaves nothing to the discretion of the State Superintendent. It is provided that "the rules that govern appeals from Justices of the Peace to the Circuit Court shall be applicable in appeals from county superintendents to the Superintendent of Public Instruction."[1] The appeal must be taken within thirty days; an appeal bond is necessary; and the county superintendent must send a transcript of the record, together with all papers in the case, to the State Superintendent, with his certificate endorsed thereon. But the State Superintendent may summon witnesses and try the case *de novo* upon its merits.[2] The only means the State Superintendent has by which to enforce his decisions and orders is the writ of *mandamus*.

A few illustrations will be sufficient to show the extent of the influence of the State Superintendent's personal judgment in the local administration of the schools. Probably a larger number of cases coming before the State Superintendent relate to the granting and revocation of licenses than to any other subject. Some of the principles laid down are the following: If a teacher loses his license, he remains licensed, and he should be treated so, provided he can prove the facts; an applicant may be refused a license on the ground of incompetency to govern a school; if an applicant is not satisfied with the grading of his county superintendent, he may appeal to the State Superintendent; if a patron of the school thinks a teacher has been graded too liberally, he has the same right of appeal; *mandamus* will lie to compel a county superintendent to issue a license after he has been so ordered by the State Superintendent.

Another important class of cases arises out of the employ-

[1] *School Law* (ed. 1897), sect. 4538.

[2] 33 *Ind. Rep'ts*, 333.

ment and dismissal of teachers. It has been held, that a trustee is liable on his bond for the misappropriation of school revenue which he has paid to an unlicensed teacher; that patrons cannot determine the selection of a teacher by protesting against all the world except a certain person; that a contract with a teacher may be rescinded when he is charged with outrageous crime; that deductions cannot be made from a teacher's salary on account of the closing of the school because of an epidemic, nor on account of the burning of a school house, nor on account of the abolishing of a department, nor on account of dismissal for legal holidays; that a teacher cannot be compelled to perform the duty of janitor without his consent; and that a teacher discharged without cause may recover compensation.

Another class of cases relates to the course of study and the use of the Bible in the schools. The county board may adopt a course of study and compel every pupil to take the entire course in the order prescribed on penalty of expulsion; they may adopt text books for high school subjects in the township graded school and enforce their use by all reasonable rules. If neither the county board of education nor the trustees individually have prescribed a course of study, the county superintendent may arrange a course of study and direct its enforcement in the schools; and the refusal of a teacher to obey the superintendent in this respect would warrant a refusal to grant him another license. The whole matter of Bible reading and prayers is left with the good judgment and conscience of teachers.

In the matter of rules and discipline cases are frequently brought before the State Superintendent. A teacher may exclude a pupil for truancy.[1] The teacher has the right to make reasonable rules in the absence of regulations estab-

[1] This rule is doubtless annulled by the law in regard to compulsory attendance. See *Laws*, 1901, p. 470.

lished by the proper authority. A teacher may enforce corporal punishment, although its use is discouraged. Immoral or licentious persons may be excluded even though their conduct may be proper while at school. Into this last field the courts have extended their jurisdiction to such an extent that they have left little to the discretion of the State Superintendent.

In addition to the decisions rendered in *bona fide* cases he is required to render a written opinion to any school officer asking the same, touching the administration or construction of the school law.[1] These opinions are entitled to great weight and may be decisive.

Besides the control wielded by virtue of his statutory authority and appellate jurisdiction, the State Superintendent exercises a wide influence by means of his advisory powers. In addition to those instances cited above on former pages,[2] much pertinent advice has been given by circular letters to trustees respecting the organizations and functions of township boards of education, township libraries, the purchase and care of furniture and apparatus, the employment of teachers, the keeping of records and papers and the preservation of documents.[3]

State Superintendent Holcombe, impressed by the report of the State Board of Health, recommended mandatory legislation to secure the proper construction of school houses.[4] Since no action was taken by the Legislature, succeeding State Superintendents thought it their duty to present plans for the proper construction and ventilation of school buildings, and to offer suggestions for guidance in the selection

[1] *School Law* (ed. 1897), sect. 4408.

[2] See pages 97, 105, 106, 108 above.

[3] See especially the *Report of State Supt.* Hoss for 1865-6, *Doc. Journ.*, pt. i, pp. 364-9.

[4] *Bien. Rep't.*, 1883-4, p. 33-4.

of sites for school houses and in the erection of the other necessary buildings.[1] Such designs and recommendations have been followed in a number of instances. The State Superintendent by his sound advice on this subject is contributing materially to the physical comfort of the pupils and the efficient discipline of the schools.

His influence for good is also recognized in the management of the State Normal School by his membership on the Board of Trustees of that institution. His guiding hand is felt in the work of the Teachers' Reading Circles by reason of membership on its board of directors. While there has been a gradual increase of the authority of the State Superintendent since the creation of the department in 1852, it has hardly kept pace with the rapid growth of the power of the State Board of Education. It is as a leading member of this Board that much of his salutary influence has been exercised over the school system.

(*b*) *The State Board of Education.* From a board without experience and without decisive authority, the State Board of Education has developed into a body of experts with extensive discretionary power, whose wise recommendations have almost the binding force of legal enactments. The present composition of the State Board of Education is as follows: The Governor of the State, the State Superintendent of Public Instruction, the President of the State University, the President of Purdue University, the President of the State Normal School, the Superintendents of common schools of the three largest cities in the State, and three citizens of prominence actively engaged in educational work in the State, appointed by the Governor, at least one of whom must be a county superintendent.[2] The term

[1] See especially the *Bien. Reports of State Supt. Pub. Instr.* for 1895–6, pp. 491–517; 1897–8, pp. 26–30, 201–296; 1899–1900, 592–688.

[2] *Laws*, 1899, p. 426–7.

of the appointed members is three years. The State Superintendent of Public Instruction is *ex officio* president of the Board. The meetings of the Board are held upon the call of the president or a majority of its members at a place designated in the call.[1] One of the great elements of its strength has been the professional, permanent and non-partisan character of its composition.

The powers and duties of the Board were, in the original law, contained in less than eight lines.[2] In the revision of the school law of 1865, four brief sections were needed.[3] One of these sections gave the Board authority to grant State licenses. This point has been discussed elsewhere[4] and needs no further comment here. The next section,[5] though worded briefly, was potential for great things. It read: "Said Board at its meetings shall perform such duties as are prescribed by law, and may make and adopt such rules, by-laws and regulations as may be necessary for its own government, and for the complete carrying into effect the provisions of the next section of this act [relating to State certificates] and not in conflict with the laws of the State, and shall take cognizance of such questions as may arise in the practical administration of the school system not otherwise provided for, and duly consider, discuss and determine the same." The authority to take cognizance of matters not otherwise provided for, has been expanded to include many powers not specifically granted. It has not infrequently happened that the Board has assumed an authority which has been pretty generally, though voluntarily, recognized, and later this action has been followed by legislation making its rules and regulations mandatory.[6]

[1] *Laws*, 1899, pp. 426–7.

[2] *Rev. Stat.*, 1852, i, p. 457.

[3] *Laws, Reg. Sess.*, 1865, pp. 23–4.

[4] See pages 90, 91 above.

[5] *School Law*, 1852, p. 52–3.

[6] See pages 90, 91, 104.

The Board also exercises directly an extensive control over the work of high schools through its practice of visiting and inspecting all high schools which apply for commissions and by designating a minimum course of study which will entitle them to the privileges of commissioned high schools. "The school officers and teachers follow almost universally the courses of study prescribed for graded schools, non-commissioned high schools and commissioned high schools."[1] "The most remarkable development in Indiana's school system in the last ten years has been in its high schools."[2] And the influence of the State Board of Education is one of the important causes of this progress, not only increasing the number of such schools but also raising the standard as well. It is not unreasonable to predict that in the near future the Legislature will prescribe a minimum course for all high schools or authorize the State Board of Education or the State Superintendent to do so, and will require a regular visitation of the commissioned high schools by some member or appointee of the State Board of Education.

One of the most responsible duties of the State Board of Education is that connected with the adoption of uniform text-books. The labor of examining conscientiously the various books submitted is onerous, and upon the judgment of the Board depend largely the educational progress of the pupils and the financial interests of the patrons. When we learn that the State contract system has been tried and abolished[3] in other states, and when we recognize the growing popularity and acknowledged benefits of the system in Indiana, we may well conclude that the State Board of Ed-

[1] Private correspondence of *State Supt.* Jones, Aug. 19, 1901.

[2] *Bien. Rep't State Supt.* Jones, 1899–1900, p, 435. There are now 717 *bona fide* high schools in the State.

[3] See Webster's *Centralizing Tendencies in State Educational Administration*, pp. 52–54.

ucation has performed its duty in good faith and with wisdom and public spirit.

One member of the State Board of Truancy is designated by the State Board of Education from its own members. It also is constituted the State Library Board.

In respect to the colleges and universities of Indiana, the State Board has little discretionary power. It does appoint annually a board of visitors for the State Normal School[1] and selects five of the eight trustees of Indiana University.[2] It has no legal control over their policy or their courses of instruction. At various times it has been proposed to extend its authority over all the institutions of higher education in the State.[3]

The State Board has recently assumed a degree of regulation through its power to grant life State licenses. It has resolved that, upon complying with certain conditions, "all graduates of higher institutions of learning in Indiana, or other institutions of equal rank in other States approved by this Board, which require graduation from commissioned high schools, or the equivalent of the same, as a condition of entrance, which maintain standard courses of study of at least four years, and whose work as to scope and quality is approved by the State Board of Education, shall be entitled to life State licenses to teach in Indiana."[4] This regulation will have a tendency to raise the standard of, and to secure uniformity in, the curricula of the colleges and universities of the State. The smaller and weaker institutions will not be satisfied to have their graduates in a class below the alumni of the larger and better equipped schools.

[1] *School Law* (ed. 1901), sect. 480. [2] *Ibid.*, sect. 498.

[3] In 1897 a bill was introduced in the Senate designed to make it unlawful for persons or institutions to confer academic degrees or titles except when empowered to do so by the State Board of Education; but the bill was indefinitely postponed. *Sen. Journ.*, 1897, pp. 337, 751.

[4] *School Law* (ed. 1901), sect. 24. Note 1.

School officials (local and State) and teachers' associations have repeatedly emphasized the great benefit which would accrue to the public schools from an extension of the powers of the State Board of Education.[1] Among the proposed modifications are included the legalization of their power to inspect and commission high schools; empowering them to direct institutes (county and township) by prescribing the general character of their work and by licensing instructors in county institutes; authorizing them to provide means of determining the educational and professional qualifications of county and city superintendents; making the subordinate officials directly answerable to the State Board and leaving to them only minor details; permitting the Board to adopt and enforce such orders and regulations as in its judgment might seem essential for the best interests of the public schools upon all matters not fully provided for by statutory regulation; and requiring the sanction of the Board to any bill relating to the schools before it should become a law. The strongest argument which the advocates of centralization offer for this extension of power is, that "that part of the work which is directly under the control of the State Board of Education has far outstripped any other part of the general plan. This is true because the State Board is composed of experts in their line and because there has been no perceptible break in the general policy for a number of years."[2] Many of these recommendations very naturally seem extremely radical to the conservative friends of education, and the expediency of their enactment may properly be questioned.

It has been observed that there are two heads to the

[1] See especially *Biennial Reports of State Supt. Pub. Instr. for* 1887–8, 1889–90, 1891–2, 1893–4, 1895–6, 1897–8, 1899–1900, and *Proceedings of the State Teachers' Association* in *Indiana School Journal.*

[2] *Bien. Report State Supt.* Jones, 1893–4, p. 71.

school system with, in some cases, conflicting statutory authority.[1] In practice this has not interfered with the harmonious administration of school affairs because of the hearty co-operation of the two authorities. A perfect integration of the system would require the subordination of the State Superintendent of Public Instruction to the State Board of Education, or *vice versa*. The more rational method would seem to be to make the State Superintendent the executive officer of the Board, appointed by it with an indefinite tenure, after satisfactory service for one year. This, of course, could not be done without a constitutional amendment. Such a method of appointment would, moreover, relieve the State of the danger of elevating to this responsible position an incompetent or unworthy man whose nomination might be dictated by political considerations irrespective of his ability and professional interest in the schools. While no disparagement of the persons who have held this office is intended, the danger does occur at every biennial State convention.

The striking thing in the management of the Indiana schools is the extensive discretionary power vested in the officials, from the State Board of Education to the district teacher. The numerous laws upon this subject have not prescribed an infinite number of petty rules and regulations; but have indicated the general lines of administration and then have left to the wisdom and judgment of those intrusted with authority, the responsibility of making the system efficient and constantly developing it. In other words, the system is unusually administrative in its character.

[1] *Bien. Report State Supt.* Vories, 1893–4, pp. 74–5.

6. CONCLUSION

What conclusions can be drawn from this examination of the administration of the public schools?

In the first place, let us ascertain the theoretical grounds for State control. It is not necessary to offer a justification of free public schools. That question was settled in theory eighty-six years ago by the framers of the first Constitution of Indiana, who declared in that instrument: "Knowledge and learning, generally diffused throughout a community, being essential to the preservation of a free government, and spreading the opportunities and advantages of education through the various parts of the country being highly conducive to this end, * * * it shall be the duty of the General Assembly, as soon as circumstances will permit, to provide by law for a general system of education, ascending in a regular gradation from township schools to a State university, wherein tuition shall be gratis, and equally open to all."[1] This sentiment was in substance repeated in 1851.[2] The interpretation which the Supreme Court has given to these clauses is well shown in the following excerpt: "Common schools, as a whole, are made a State institution—a system co-extensive with the State, embracing within it every citizen, every foot of territory and all the taxable property of the State."[3] Unless the common schools, this State institution, are adequately supported by means of an income derived from some grant or endowment in which the State has only a fiduciary interest, the State must provide sufficient resources to maintain them. In Indiana the "magnificent school fund" is a matter of just pride, but the income therefrom constitutes less than one-twelfth of the cost of

[1] *Constitution of 1816*, art. ix, sects. 1 and 2.

[2] *Constitution*, 1851, art. viii, sect. 1.

[3] City of Lafayette *v.* Jenners, 10 *Indiana Rep'ts*, 76–7.

maintaining the public schools.[1] In this State the only practical way of obtaining ample revenue for any purpose is by the exercise of the power of taxation. Whether this is done by a general State levy or by local levies, which must be authorized by the State Legislature, it is the act of the State, provided the levy is for State expenses.[2] From the citation made above it appears that school expenditures are for State purposes. Now, it is a recognized principle of political science that when representative governments authorize public expenditures there must be a proper accounting in order to show that the money has actually been expended in the way and for the purposes intended. In the matter of the common schools, this requires not merely the balancing of accounts to prevent misapplication of revenue, but also, and much more important, a complete system of supervision of all the work and all the affairs of the school. How else can the State know whether or not in return for this vast expenditure, exceeding $8,000,000 annually, "knowledge and learning" are "being generally diffused throughout a community" in a way that contributes to the highest welfare of the whole State? Theoretically the State has just ground for its claim to control common school education.

Let us apply the inductive method and see if we can find a justification of central control in the results which have been attained under it. The mistake must not be made of attributing all the advancement during the last half century to centralization alone. Other forces have been at work

[1] The school fund in 1900 amounted to $10,359,959, which at 6 per cent interest would yield about $621,600; the total revenue distributed for school purposes for the same year was equal to $8,021,138. *Bien. Report State Supt.* Jones for 1899–1900, pp.423–4.

[2] Cooley, *The Law of Taxation*, 2d ed., p. 329 and Goodnow, F. J., *Municipal Home Rule*, pp. 51 and 225.

also. The following statistics illustrate the gradual progress of education in Indiana:

Year.	Total Population.	No. of children of school age.	School enrollment.	Amount expended for schools.	Average length of all schools for school year (days].
1840..	685,866	*a* 273,784	48,189		
1850..	988,416	*a* 399,292	161,500	$377,987	
1860..	1,350,428	*b* 512,478	303,873	1,376,425	65
1870..	1,680,637	*c* 619,627	436,736	1,474,000	97
1880..	1,978,301	*d* 703,558	511,283	4,491,850	136
1890..	2,192,404	*b* 770,722	512,955	5,572,124	130
1900..	2,516,462	*b* 756,004	564,807	8,021,138	152

a, Ages, 5–20. *b*, Ages, 5–21. *c*, Ages, 6–21. *d*, Ages, 6–20.

The school enrollment constituted, in 1840, less than 18 per cent. of the children of school age; in 1900 it was nearly 75 per cent. In 1850 17.5 per cent. of the people over *twenty* years of age were illiterate; in 1890 but 6.3 per cent. of the population over *ten* years of age were classed as illiterates. Nothing could demonstrate more forcibly the increased efficiency of the school system.

In respect to the school funds and revenues, one who reads the repeated lamentations of officers cited in the former sections of this chapter,[1] cannot fail to reach the conclusion that centralization has increased the school funds and the available revenue by increasing their safety and insuring their application to the proper ends. We can hardly conceive of a condition to-day similar to that reported by the Auditor of State in 1842. He affirmed that the amount of interest from the different sources which should be paid out annually was $146,298, and that the amount actually disbursed was $94,436, leaving a deficit unaccounted for of $51,862—more than 35 per cent. of the total interest.[2] The

[1] See pages 44, 46–7, 49, 52, 54, above.

[2] See page 44 (footnote) above. A member of the Constitutional Convention

present security and confidence when contrasted with the wasteful and fraudulent management of former days cannot be explained by pointing out the general advance in public ideals and integrity. For if we take the same period and compare the administration of the Bank Tax Fund and the Sinking Fund with the management of the Congressional Township Fund, the County Seminary Fund and the Delinquent Tax Fund, we find the same difference. The former were administered by central officers and not a dollar was lost; the latter were under local control which was characterized by "inefficiency, confusion and waste." There is no reasonable doubt, that the presence in each county of the county superintendent and the existence of the State Superintendent of Public Instruction, with their powers of inspection, have annually saved to the school fund thousands of dollars.[1]

In the matter of examinations, does it require any argument to prove that the present centralized system of determining the qualifications of teachers is superior to that decentralized method which fifty years ago permitted the majority of voters of a school district meeting to dispense with such legal qualifications of school teachers as they might deem proper?[2] If the mere statement of the facts does not carry conviction with it, read the testimony of experts on the former pages.

When we come to consider the results of centralization in regard to the control over the course of study we are led to

of 1850–1 declared that "an accurate history of the school fund would show more improvidence and folly in its management than is now often witnessed in connection with any fund, either public or private." *Debates of the Const. Conv.*, 1850–1, vol. ii, pp. 1979–80.

[1] See page 72 above for estimate of the saving effected by the county superintendents in 1873–4.

[2] See page 87 above. [3] See pages 89–91, above.

the same conclusion. Prior to 1865 no law had prescribed what branches should be taught in the schools.[1] Even after the branches required to be taught were specified by statute, there were neglect of certain subjects and lack of classification.[2] It was not until the State Board of Education took up this question and, with the assistance of representatives of the city and county superintendents, prepared a uniform course of study, that proper correlation and integration were attained. The close articulation between the colleges and universities on the one hand, and the high schools on the other, is the work also of the State Board of Education. This connection has lifted up the whole common school system[3] to a higher plane. The State Board of Education in its capacity of a School Book Commission has rescued the State from that chaotic condition described by the Superintendent of Common Schools in 1845,[4] and from the scandals and corruption connected with the county adoption prior to 1889. The present State contract system has reduced the cost of books from fifty to sixty per cent. and has at the same time improved the quality both in the matter of gradation and contents. "The School Text Book Law has increased the attendance and made the work much more uniform. In fact, it has practically solved the question of uniformity in school work." [5]

The publication of a State manual gave a noticeable impulse to the movement towards a term of uniform length. Superintendent Vories in his report for 1893–4 said that the length of the term had been more nearly uniform throughout the State and had increased greatly.[6]

The value of institutes and reading circles as means of in-

[1] See pages 93–4 above. [2] See page 94 above.

[3] See pages 98, 129 above. [4] See page 99 above (footnote 4).

[5] *Bien. Report State Supt. Pub. Instr.*, 1893–4, pp. 62 and 63.

[6] *Ibid.*, 1893–4, pp. 10 and 11.

creasing the intelligence and efficiency of teachers has been materially enhanced by the thoughtful advice and direction of the State Superintendent of Public Instruction and the State Board of Education.[1]

The failure to make local libraries a satisfactory adjunct to the schools was due in part to the lack of central control over their management, and in part to the inefficient local direction. It remains to be seen what progress will be made under the arrangement of the law of 1899.

The present State Superintendent of Public Instruction affirms that the compulsory education law, in the three years of its operation, "has done more for the schools than its promoters anticipated."[2]

In addition to the influence exerted by the central authorities in the field of administration, they have exercised a wholesome influence over school legislation. The opinion and advice of these expert officials have carried great weight with legislators desirous of promoting the highest educational interests of the State. It is not exceeding the bounds of truth to say that after making due allowance for all other causes, the progress of the public schools of Indiana is due

[1] See pages 105, 106, 108, above.

[2] In corroboration of this statement he presents the following statistics:

Per cent. of enrollment based upon the enumeration during the operation of the law	74.3
Per cent. of enrollment based upon the enumeration during the nine years previous to its enactment	67.8
Per cent. of attendance based upon the enumeration during the operation of the law	57.5
Per cent. of attendance based upon the enumeration during the nine years years previous to its enactment	48.1
Per cent. of attendance based upon the enrollment during the operation of the law	76.5
Per cent. of attendance based upon the enrollment during the nine years previous to its enactment	70.2

Rep't State Supt. Pub. Instr., 1899–1900, pp. 490–1.

more to its centralized administration than to any other influence.

II. Schools for Special Classes.

During the period from 1840 to 1850, we have noticed a tendency towards centralization in the administration of the common schools. Within this same decade a similar movement was seen in the establishment of special State schools for the education of the blind, and the deaf and dumb. These institutions partake largely of the nature of charitable institutions. But in the minds of the legislators who founded them the paramount purpose was to secure a general system of education by providing "for those who are susceptible of an education, but to whom it cannot be imparted by the ordinary means of instruction."[1] The design of these institutions was not to restore sight to the blind or speech and hearing to the deaf, nor to afford an asylum where they might be provided with permanent homes; but to educate these people so as to enable them to earn their own living.

(*a*) *The Deaf and Dumb.* Governor Wallace in his message in 1838 recommended that provision be made to educate the deaf and dumb at the expense of the State.[2] The number of such unfortunate persons in the State at that time was estimated at three or four hundred. In 1844[3] the "Asylum for the Education of the Deaf and Dumb" was opened with fourteen pupils in attendance. Tuition, board and clothing were free only to those whose parents were unable to defray such expenses. These costs were paid out of the State treasury. In 1848 the doors of the institution were thrown open to all the deaf and dumb of the State.[4]

[1] *Message of Governor* Bigger, 1841, *Doc. Journ.*, 1841–2, *House Rep'ts*, p. 85.

[2] *Doc. Journ.*, 1838–9, p. 20.

[3] *Laws*, 1843–4, p. 36 ff.

[4] *Laws*, 1848–9, p. 61.

Four years later it was provided that only in cases of extreme necessity was clothing to be furnished by the State to any pupil of the institution; and even then, the State was to be reimbursed by the county in which such pupil resided.[1] This policy of affording board and free tuition by the State to all the deaf and dumb, and free clothing by the county to the indigent pupils, remains to the present day. The superintendent recommended[2] in 1892 and 1896 compulsory attendance at the Institution of all deaf and dumb children between the ages of six and eighteen for at least seven years.

(b) The Blind. In 1847 the "Indiana Institute for the Education of the Blind" was established.[3] The State provided boarding and instruction free to the children of all residents of the State; but clothing and traveling expenses were furnished by the parents or guardians of pupils, or, in case of indigence, by the county commissioners if they deemed it expedient. The school began operations with nine pupils. The attendance did not increase rapidly. Eight years after its establishment the trustees reported that not more than one-eighth of the blind in the State had availed themselves of the advantages of the institution.[4] The benefits which it confers have been more generally appreciated in later years.

The advantages derived from this institutional system are so decided that they offset the disadvantages which absence from their homes brings to the pupils. Special methods of teaching are necessary in the instruction of the deaf and

[1] *Rev. Stat.*, 1852, pp. 243, 247.

[2] *Reports of Supt.*, 1892, p. 15; 1896, p. 15; 1901. Also the *Indianapolis News*, Jan. 17, 1902, p. 4.

[3] *Laws*, 1846–7, pp. 41–3.

[4] *Rep't of Trustees of Institute for the Blind*, 1855, *Doc. Journ.*, 1855, Pt. ii, p. 177. The attendance at that time was only seventy-seven.

blind which would entail a very heavy expense if each blind or deaf child were properly taught at its own home.

(c) Other Classes. With a view to realizing more completely that ideal system of universal education, special provision has been made for the instruction of the feeble-minded youth, for the orphans of soldiers and sailors, and for the inmates of the Reform School for Boys, the Industrial School for Girls, the Reformatory and the State prisons. These institutions are so distinctly benevolent or correctional in their purposes that they will properly be considered in the next chapter.

CHAPTER III

CHARITIES AND CORRECTION.

1. The Development of the System of Local Poor Relief Prior to 1890: A Period of Decentralization.

The act of 1790 which provided for the division of counties into townships, required the courts of general quarter sessions of the peace to appoint annually one or more overseers of the poor in each township.[1] These officers seem to have had no authority to provide relief on their own motion. Their only function was to inform some justice of the peace in case of any distress, whereupon, the justice might take legal means to afford the proper and seasonable aid. Five years later authority in financial matters was first granted to the overseers. A law imposing certain fines stipulated that they should be paid to the overseer of the poor of the township in which the "recusants" respectively lived, for the use of the poor thereof.[2]

The beginning of a practical system of poor relief was made in 1795. It was by law[3] made the duty of the justices of the court of general quarter sessions of the peace to appoint annually "two substantial inhabitants" in each township to be the overseers of the poor. The office was

[1] Chase, *op cit.*, i, p. 108.

[2] *Laws of the Northwest Territory*, 1795, p. 51.

[3] The law was taken from the Pennsylvania code. Its close similarity to the English Poor Law of 1601 is very striking. See *The English Statutes at Large*, ii, pp. 702 ff.

obligatory. For the first time the townships were given a corporate existence, the overseers of the poor being declared bodies politic and corporate, capable of suing and being sued, and receiving and holding gifts or devises to the township for charitable purposes. They had power to levy a poll and property tax for the support of the poor, but the approval of at least two justices of the peace of the county was necessary to make their action effective. A part of the funds thus obtained was to be expended in "providing proper houses and places and a convenient stock of hemp, flax, thread and other ware and stuff for setting to work such poor persons as apply for relief and are capable of working." The remainder was to be used for relieving unfortunate persons who were not able to work. This was the first attempt to classify poor persons who received public aid. The overseers had authority to contract with any one for a house or lodging for keeping and employing the poor, and, with the approval of at least two justices, to apprentice poor children whose parents were dead or unable to support them. The authority of the overseers was restricted by the requirement that two justices of the peace should give their consent before the name of any person could be entered in the "poor book" or any relief be granted. On the day of the annual selection of overseers, the free male inhabitants of the township assembled and chose three freeholders to settle and adjust the accounts of the overseers. The sections defining "legal settlement" were based upon the theory that each township was bound to maintain its own poor.[1] But the

[1] A stranger, coming from any State of the Union or from any township of the Territory, was required to furnish a certificate from the overseer of the poor of the township whence he came, obligating the said township to provide support for the person mentioned, if relief should be required. Upon the complaint of the overseer any justice of the peace might issue a warrant directing the removal of any person not legally settled. Appeals could be had to the justices of the peace at their next general quarter sessions. Chase, *op. cit.*, i, 175–182.

establishment of workhouses in each township proved to be impracticable.

The next legislation on this subject (in 1799) required the overseer to farm out poor persons who were a public charge to the lowest bidder. The farmers of the poor were entitled to keep them at moderate labor. To prevent injustice, the overseer had power to examine into the grounds of any complaint made by, or on behalf of, any pauper; and if the pauper had been insufficiently provided for or ill-treated, it was lawful for him to withhold a part of the compensation. Overseers were required to make returns to the county commissioners, who were authorized to levy a tax equal in amount to that for which the poor were sold.[1]

Here was a step toward local centralization. The burden of the public poor was shifted from the separate townships to the county as a whole. This remained the practice until 1897. In 1803 the power to levy the poor tax was transferred from the county commissioners to the court of common pleas in each county;[2] and two years later the authority to appoint the overseers of the poor was conferred upon the same court.[3]

The Constitution of 1816 made it the duty of the General Assembly "to provide one or more farms to be an asylum for those persons who, by reason of age, infirmity or other misfortunes, may have a claim upon the aid and beneficence of society; on such principles, that such persons may therein find employment and every reasonable comfort, and lose by their usefulness the degrading sense of dependence."[4]

The General Assembly, in 1818, re-enacted the territorial laws regulating the care of the poor. The only changes

[1] Chase, i, pp. 284–5.

[2] *Terr. Laws*, 1803, p. 63.

[3] *Ibid.*, 1805, p. 15. In 1813 these powers were given to the associate judges of the circuit court. *Ibid.*, 1813, p. 124 *et seq.*

[4] *Constitution of* 1816, art. ix, sect. 4.

made were the transference to the county commissioners of the authority to appoint for each township two overseers of the poor; and the granting to overseers the power to bind out poor children as apprentices.[1]

A privilege still conceded to applicants for aid was first granted in 1821. Poor persons who believed themselves entitled to relief which the overseers refused to grant, were given the right to apply to the board of county commissioners. The latter, if they thought proper, might direct the overseers to put them upon the poor list.[2] A larger degree of discretion was given to the county commissioners in 1823. They were authorized to grant to paupers of mature years and sound mind, who would from their general character probably be benefited thereby, an allowance equal to the estimated charge of their maintenance. This sum was to be under the immediate control and direction of the recipients.[3]

The first effort to carry out the constitutional provision relating to the poor, was made in 1821.[4] Though limited in its application to a single county, it was the practical beginning of the county poor-farm system.[5] It provided for the establishment of a house for the employment and support of the poor of Knox County. Three directors, one retiring annually, were to be elected by the qualified voters for a term of three years. They were created a "body politic and corporate in law to all intents and purposes whatsoever relating to the poor" of Knox County, and were styled "directors of the poor." They were granted power to apprentice poor children, to employ officers and attendants, and to make rules for the government of the "house". Before going into force these regulations had to receive the

[1] *Laws*, 1817–8, pp. 154–157.

[2] *Laws*, 1821–2, p. 27.

[3] *Laws*, 1822–3, pp. 140–1.

[4] *Laws*, 1820–1, pp. 102–110.

[5] The law of 1795 (see p. 143), providing for houses of employment seems never to have been put into operation.

approval of the Circuit Court. The county commissioners were required to provide the sum needed for purchasing land and erecting the necessary buildings. The directors were to account annually to the county commissioners for all receipts and expenditures. They also reported, at least once annually, to the Circuit Court and grand jury of the county a list with the number, ages and sex of the inmates of the house of employment; and also a list of the children bound out as apprentices with the names of their masters and mistresses, and their trade, occupation or calling. They were further required to submit to inspection and examination by such visitors as the Circuit Court might appoint from time to time. One of the directors was to visit and inspect the house once each month. As soon as the buildings were completed, all the poor of each township were to be removed thither; and the office of overseer of the poor for Knox county was abolished thereby. Here was the first attempt to secure regular reports of statistical information and to require official inspection and examination. Indeed, the act seems quite modern in spirit. Within that decade seven other counties[1] were given the same rights with slight qualifications; only permanent charges were to be placed in the county asylum, and the office of the overseer of the poor was to be retained, presumably to furnish relief to those temporarily dependent. In the main, these special laws were successful in their operation, although the act relative to the Knox county asylum was repealed in 1828 and the general laws again made applicable to that county.[2]

The prevailing way of dealing with the poor was still the farming-out method. The character of the poor relief

[1] The counties of Clark, Harrison, Wayne, Jefferson, Washington, Dearborn and Floyd. *Rev. Stat.*, 1824, pp. 283–4; *Laws*, 1829–30, pp. 7–8; *Special Laws* 1830–1, pp. 6–7.

[2] *Laws*, 1827–8, p. 69.

system and the consequences of its operation were carefully reviewed by Governor Ray in his message of 1825. After quoting the fourth section of the ninth article of the Constitution,[1] he proceeded to say: "The uniform silence of our legislature on this subject is sufficient to induce a belief that the benevolent provision has not yet received the consideration to which it is entitled. * * * * The existing law for the support of the poor is radically defective in the principles of humanity * * * * as well as in economy of expenditure. * * * * These unhappy objects of public charity are sold like merchandise or cattle in a public market to persons who are generally induced to become their purchasers from motives of gain or avarice, rather than humanity and benevolence." This "mode of relief is calculated to lacerate anew the already wounded sensibility, to increase the sense of degradation, and changes the unfortunate dependent from an object of public charity into a means of private speculation." He recommended "dividing the State into districts of counties, or larger, and making provisions for the establishment of an asylum in each, where under the care of a single superintendent, made responsible for his conduct, the poor, deaf, dumb and unfortunate of the district may be collected; and those of them, of capability, occupied in some useful employment contributory to their subsistence." He believed that such a system would cost little more than one-half the amount expended under the existing arrangement, "besides affording abundantly the milk of human kindness."[2] A committee of the Senate reported a resolution in favor of an act to divide the State into three districts, in each of which a farm should be purchased to carry into effect the humane principles of the Constitution.[3] The bill failed to become a law, but the General Assembly was sufficiently

[1] See page 144 above.

[2] *Sen. Journ.*, 1825–6, pp. 26–28.

[3] *Ibid* p 86.

impressed to call for information from the clerks of the Circuit Courts in respect to the amount of expenditures for poor relief together with the "number and kind of paupers and indigent persons who received charity."[1] The law was disregarded by most of the clerks; but fourteen made return returns to the Secretary of State. These were sufficient to show that the system was expensive.[2]

The inhabitants of Indiana, acting collectively either as a State or as local communities, were reluctant to impose upon themselves the burden of taxation which was necessary to supply adequate funds for the purpose of poor relief. Moreover, they beheld many thousands of acres of government lands lying unoccupied within the State. In that day of national liberality it did not seem inconsistent nor improper to appeal to the general government for aid. And besides, they had before them the conspicuous examples of Federal generosity in favor of schools and public improvements. Accordingly, the fifteenth General Assembly addressed a memorial to the Congress of the United States, requesting that an act be passed granting one section of land for each county in the State which, or the proceeds of which, should be applied to erect asylums and provide farms to receive all persons found to be objects of charity; two sections to be applied to benefit the deaf and dumb within the entire State, and also one section to erect and sustain a "lunatic asylum." "Indiana repudiates the idea of selfishness," and wishes only "to take upon herself the responsibility of an agent, empowered to administer consolation to all whom casualty or misadventure may render dependent on benevolent protection."[3] As a further ground for asking this donation, the memorial pointed out that many of the unfortunates in the State were

[1] *Laws*, 1825–6, p. 49.

[2] *House Journ.*, 1826–7, pp. 60–1.

[3] *Special Laws*, 1830–1, pp. 188–9.

newly-arrived immigrants from the older States, who, being unacclimated, quickly succumbed to disease.

Fortunately they did not wait for Federal assistance. The Revised Statutes of 1831 contain an act of general application authorizing county boards, if they deemed it advisable, to buy land and erect buildings thereon for the support and accommodation of the poor. Persons who had become permanent charges as paupers on the counties were to be removed to such asylums, and to be kept at such employment as seemed advisable. The county boards were empowered to appoint one or more directors of the institutions, who were to make reports of their accounts and proceedings to the appointing board. In counties having no poor asylum the law still permitted the farming out of the poor by the overseers, who were required to report to the same board.[1]

The system of public poor asylums seems not to have been entirely satisfactory. We find special acts granting the commissioners of certain counties[2] authority to employ some humane person to receive into his care and custody all permanent county charges, and to take such measures for their employment as the board of commissioners should direct. The county boards retained the rights to require bonds and reports from the contractors and to inspect the asylums annually.[3]

At that time there existed in Indiana five methods of dealing with the poor: the "poor asylum" system, which meant the gathering of the poor in asylums or farms under the superintendence of county officials; the "contract system," which signified a similar congregation under the control of a private person paid by the county; the "farming-out" system, under which the poor, individually, were placed in the care of private persons who received a compensation;

[1] *Rev. Stat.*, 1831, pp. 286–7.

[2] Floyd, Knox and Daviess.

[3] *Laws*, 1831–2, pp. 20–1; *Ibid.*, 1832–3, pp. 27–8; *Ibid.*. 1834–5, p. 65.

the "apprentice system" for minors; and the "outdoor relief," under which aid was furnished by the township trustees or county commissioners to persons not cared for in any of the ways mentioned above.

For nearly fifty years from 1831, there was almost no progress towards a scientific solution of the problem of pauperism. An attempt was made to improve the class of persons responsible for the care of the poor by constituting the justices of the peace of each township *ex-officio* overseers of the poor.[1] Evidently this experiment was not a success, for in 1852 the trustees of the several civil townships were declared overseers of the poor.[2] An ineffective plan of local inspection was tried in 1843 and again in 1852.[3] It was during the decade from 1840 to 1850 that the first State institutions for the care and education of the dependent classes were established. But along with this centralization of administration there was no evidence of the conception of a central control or supervision over the administration of local charity.

Juvenile Dependents. Prior to 1875, with the exception of the Soldiers' and Sailors' Orphans' Home, there was no general provision for the care of indigent children in any public institutions other than the county asylums. A few private orphan asylums had been established. The Widows' and Orphans' Asylum of Indianapolis was incorporated in 1851.[4] A number of years later the common council of Indianapolis and the board of commissioners of Marion county were empowered to make appropriations of money or supplies for the care and support of the inmates of this asylum. In case either corporation made such an appropriation, it was entitled to be represented on the board of

[1] *Laws*, 1832–3, p. 28; 1842–3, pp. 4–5; 1843–4, p. 48.

[2] *Rev. Stat.*, 1852, i, p. 401.

[3] See page 175 below.

[4] *Local Laws*, 1850–1, pp. 375–6.

directors of the institution.[1] In 1875 the name was changed to The Indianapolis Orphans' Asylum."[2]

This experiment proved to be satisfactory after a fair trial. In 1875 the policy was made general; and at the same time a greater degree of control over such institutions was secured. The board of commissioners of any county in which was located an orphan asylum, maintained by a voluntary association, was authorized, after due examination as to the number of orphan children in the asylum, to allow the institution the sum of twenty-five cents per day for each orphan child cared for by it, that would otherwise have been a charge upon the county and a proper subjeet for the poor asylum. One member of the county board was *ex-officio* a member of the board of officers of such association. It was made the duty of the managers to bind out any orphan child, whenever that could be done on such terms as would secure for the child proper maintenance and education; and to see that the child was properly treated.[3] This law recognized the duty and expediency of separating the dependent children from the older and hopeless paupers, and the necessity of subjecting private orphan asylums to public examination. But the law was very defective.

There was still a large number of inmates of county asylums who were being reared in the midst of associations calculated to prevent or impede the chances of their future usefulness. It was, therefore, provided in 1881 that county commissioners should have the authority to employ a woman, who would be willing to accept in some convenient and suitable place the charge of all pauper children of sound mind between the ages of one and sixteen years, that might be in the county asylum. It was the matron's duty to care for the children and furnish them proper instruction.

[1] *Laws*, 1867, p. 230.

[2] *Ibid.*, 1875, p. 90.

[3] *Laws, Reg. Sess.*, 1875, p. 169–170.

Earnest effort was to be made to find homes for them. The board of commissioners had the right to select a committee of three to visit and examine the condition of the orphanage at least quarterly.[1] In the operation of this plan the following imperfections were disclosed:

(1) Insufficient and unsuitable work, entailing habits of laziness and idleness in the children, and lack of training for a self-supporting life in maturity.

(2) Failure in, and indifference to, placing out the children in suitable homes, due (1) to objections of parents and guardians who ought to have supported the children, and (2) to the selfish interest the matron had in keeping them in her "home."[2]

The next experiment was also first tried in Indianapolis. A law of 1889 provided that in all townships having a population of more than 75,000, there might be created a board to be known as "The Board of Children's Guardians of . . . . . Township." The members were to be appointed by the Circuit Court, and were to serve without pay. They were subject to removal by the Circuit Court for misconduct or neglect of duty upon proper showing before the court after notice. This board was to have the diligent supervision of the neglected and dependent children under fifteen years of age, and had power to take under their control any children abandoned, neglected, or cruelly treated by their parents, child beggars, incorrigibles, and children of drunkards or persons unfit to care for them. They had power to provide a temporary "home" for them, or to commit, by leave of the Circuit Court, to the House of Refuge or Indiana Reformatory for Girls.[3] Two years later the provisions of the law were extended to the entire county of Marion. The

[1] *Laws, Spec. Sess.*, 1881, p. 580.

[2] *Reports Board of State Charities*, 1891, pp. 88–9; 1893, pp. 75–6.

[3] *Laws*, 1889, pp. 261–3.

powers and duties of the board were enlarged. The county commissioners were required to see that a house suitable for their accommodation was provided, and to make a *per diem* allowance for the keeping of each child.[1] At the next session of the General Assembly the law was extended to counties having a population of 50,000.[2] It then applied to four counties. The results were very satisfactory. The moral influence of the board of children's guardians, backed by the law, caused many families to clean up physically and morally.[3] In 1901 it was made permissive in all counties.

The recent development in the methods of local charitable and benevolent work, and its connections with the central administration, can be more clearly presented in a discussion of the supervisory powers of the Board of State Charities. The further consideration of this topic will therefore be deferred.[4]

2. THE DEVELOPMENT OF STATE CHARITABLE INSTITUTIONS.

EXAMPLES OF CENTRALIZATION.

The half century following the year 1831 showed little progress in the local care of the dependent. The legislation of that period was often special in its application, incomplete in its details and experimental in its purpose. There was, however, decided advancement in the method of caring for certain special classes of unfortunates. For many years there had been a growing conviction that the general poor laws did not provide the proper relief for certain persons who required peculiar treatment because of physical or mental infirmities. Such treatment could be given only in central institutions under the direct control of State officials. This was the beginning of the centralized system which exists to-day.

[1] *Laws*, 1891, pp. 365–7.

[2] *Laws*, 1893, p. 282.

[3] *Rep't Bd. State Char.*, 1898, p. 69.

[4] See below, sect. 4, vi.

The blind and the deaf and dumb were the first classes to receive some specialized form of aid. As the institutions[1] founded for their improvement have been considered under the subject of "Schools," it is not necessary to repeat the discussion here.

I. *The Insane.* As early as 1815, and again in 1818,[2] insane persons having no means of support, had been declared entitled to all the benefits of the law providing for the relief of the poor. But there was no pretense of adapting methods of treatment to the peculiar necessities of this class.

Not infrequently insane persons were a source of danger to the people of their community, and it was necessary to provide some protection. In 1840[3] it was made the duty of a justice of the peace, after a hearing before a jury, to appoint some suitable person to take charge of any dangerously insane person. The compensation for such service came out of the county funds.

When the seat of government was established at Indianapolis, from the lands granted by Congress, a lot of ample size was reserved by the State for the purpose of a "Lunatic Asylum." Up to 1844 nothing had been done to carry out the object of the reservation. "In all legislation respecting the insane they had only been regarded as incapable of self-government."[4] In the general revenue acts of 1844 and the years immediately following, was included a provision for the levy of a tax to create a fund with which to establish a "lunatic asylum."[5]

In 1848 the Indiana Hospital for the Insane was opened for the reception of patients and provision for its manage-

[1] Opened in 1844 and 1847.

[2] *Terr. Laws*, 1815, pp. 66–68. *Laws*, 1817–18, Jan. 22, 1818.

[3] *Laws*, 1839–40, p. 72.

[4] *Message of Governor*, 1841. *Doc. Journ.*, 1841–2, *House Reports*, p. 85.

[5] *Laws*, 1843–4, p. 50; 1844–5, p. 50; 1845–6, p. 65; 1846–7, p. 48.

ment was made by law. A board of six commissioners, elected by joint *viva voce* vote of the General Assembly, was given general control and management of the hospital, with power to appoint the superintendent, officers and attendants. Full annual reports were required from the superintendent to the commissioners and Treasurer of State; and from the commissioners to the General Assembly. Admission was offered to insane (not idiotic) persons having legal settlement in the State. If the number of applications for admission were greater than could be received, preference was given first, to recent cases; second, to chronic cases showing prospect of recovery; third, to applicants of longest standing; but each county was entitled to its just proportion. The inmates were to be supported and to receive medical treatment at the expense of the State. Each county was required to defray the traveling expenses of patients sent from it, and to see that proper clothing was supplied to them.[1]

In 1864 an inquiry was made as to the number of insane in the State besides those in the hospital. The figures disclosed the fact that not thirty per cent. of those alleged to be of unsound mind were in the Hospital for the Insane.[2] The next year a special appropriation was made for the erection of a building for the permanent custodial care of the incurable insane.[3] The State thus recognized that it owed a duty not only to the demented who might be restored to sanity, but also to the hopelessly insane. These wards could be more carefully and economically cared for in State institutions than anywhere else. Subsequently the incurables were discharged to make room for more recent cases. After repeated recommendations for increased accommodations

[1] *Laws*, 1847–8, pp. 84–7.

[2] *An. Rept. Supt. Hosp. for Insane*, 1864, *Doc. Journ.*, Pt. i, p. 381–2.

[3] *Laws, Spec. Sess.*, 1865–6, pp. 199–200.

had been submitted, the capacity of the institution was doubled by the construction of a separate department for women in 1875,[1] and provision was made for the erection of three additional hospitals in 1883. The rules and regulations governing the old hospital were applied as far as possible, but it was specifically declared that no patient should be discharged from the new hospitals until permanently cured.[2] The number of applicants has increased beyond the capacity of the hospitals. In the central hospital district we find at present the incurables discharged to make room for the recent and possibly curable cases. In the three other districts, under the law, the incurables must be retained even if this compels the rejection of the possibly curable cases. It is safe to say that fifteen per cent. of the insane in the State are maintained (if not neglected) outside of the State hospitals.[3] The condition of these persons appeals very strongly to the sympathy of the humane. Innumerable requests for the care and support by the State of all the insane, curable and incurable, have been made for fifty years by superintendents and commissioners of the hospital,[4] by governors,[5] legislative committees,[6] and by private individuals. Still no adequate arrangements have been made.

II. *Dependent Soldiers and Sailors.* One of the results of the Civil War was a stimulation of the policy of furnishing State support to certain dependent classes. This grew

[1] *Laws, Reg. Sess.*, 1875, pp. 84–7.

[2] *Laws*, 1883. p. 164.

[3] *Report of Board of State Charities*, 1900, pp. 61–3.

[4] *Rep'ts Com'r of Hosp. Ins.*, 1853, pp. 8, 22; 1854, *Doc. Journ*, p. 405; 1855, *Doc. Journ.*, Pt. ii, pp. 48–50; 1857, *Doc. Journ.*, Pt. ii, p. 120; 1861, *Doc. Journ.*, 1860–1, Pt. ii, p. 40; 1872, p. 30; 1874, p. 18.

[5] *House Journ.*, 1872, p. 12.

[6] *House Journ., Reg. Sess.*, 1861, pp, 661–2; *House Journ.*, 1875, pp. 993–6; *Sen. Journ., Reg. Sess.*, 1861, p, 577.

naturally out of the deep sense of gratitude towards the defenders of the Nation. It is also possible that the increased power of the Executive Departments of the Federal Government and of the State during the war, made the people more willing to submit to this larger centralization in the State administration.

In the very first year of the war the authorities of counties, cities and towns were given power to levy a tax, and to appropriate money for the protection and maintenance of the families of volunteers in the armies of the United States and of the State of Indiana.[1] There was no central supervision over the administration of this law. In 1865 an act was passed levying for two years a State tax to provide a fund for the relief and support of the sick and the wounded soldiers in hospitals, and the families of soldiers, seamen and marines who were deceased or serving in the army of the United States. The final distribution of this State fund was left to the township trustees. In case the trustees and the county commissioners failed to perform their duties on account of neglect, malconduct or disability, the Governor had the power to appoint suitable persons to carry the law into execution.[2] The meaning of the law was obscure because of defects and inconsistencies in its provisions. In December of the same year it was repealed and provision was made for the disposition of any funds remaining still in the hands of county officials.[3]

A Soldiers' Home was established at Indianapolis during the war by private contributions under the auspices of the Sanitary Commission. It was intended primarily as a temporary home for the sick and wounded soldiers passing through Indianapolis on their way home. A similar institu-

[1] *Laws, Spec. Sess.*, 1861, p. 22.

[2] *Laws, Reg. Sess.*, 1865, pp. 93–7.

[3] *Laws, Spec. Sess.*, 1865, pp. 59–61.

tion was founded in May, 1865, for the care of dependent soldiers from Indiana. Governor Morton in 1865 called the attention of the General Assembly to "the necessity for the speedy establishment of an institution in which Indiana soldiers and seamen disabled by wounds or disease contracted in the service of the United States, shall be cared for and maintained during the continuance of their disabilities." He referred to this voluntary association and urged upon the Legislature the duty of not leaving this institution to the uncertainty of voluntary contributions. According to the memorial of the officers and directors of the Home, the number of disabled soldiers in Indiana was estimated at five hundred, and the number of orphans at one thousand.[1] Again in 1867 Governor Morton made an appeal for the care of the disabled soldiers. He said: "The support furnished by charity would be precarious and uncertain, and justice, humanity and the honor of the State forbade that these men [the disabled soldiers] should suffer for the comforts of life or find that the poor-house and the society of paupers should be the end and reward of their campaigns."[2]

At that session "The Indiana Soldiers' and Seamen's Home" was established by law. It was placed under the control of a board of three trustees, elected by the General Assembly for a term of six years.[3] Two years later annual reports to the Governor were required and the trustees were made the legal guardians of all children admitted.[4] The in-

[1] *House Journ., Spec. Sess.*, 1865, pp. 29–30, 100.

[2] *Message, House Journ.*, 1867, pp. 35–6.

[3] *Laws*, 1867, pp. 190–193.

[4] *Laws, Spec. Sess.*, 1869, pp. 119–120. Admissions to the Home were fixed in the following order: (1) Totally disabled soldiers and seamen; (2) Partially disabled soldiers and seamen; (3) Orphans under fifteen years of age of soldiers and seamen, without father and mother; (4) Orphans under fifteen years whose mothers were living; (5) Widows of soldiers and seamen.

stitution was not very heartily supported.[1] In 1871 the building devoted to the use of the soldiers was destroyed by fire. This necessitated the closing of that department, and the inmates[2] were transferred to the National Asylum at Dayton, Ohio.

For almost twenty-five years there was no provision for the soldiers as a distinct class. In his message of 1895 Governor Matthews urged the propriety of making special provision for them. He estimated the number of old soldiers maintained in the poor houses of the State at three hundred and fifty.[3] In that year the "State Home for Disabled and Destitute Soldiers, Sailors or Marines, and the Wives and Destitute Widows of such Soldiers, Sailors or Marines," was established at La Fayette. The institution s under the management of a bi-partisan board appointed by the Governor and removable by him for cause stated in the order. They must all be honorably discharged soldiers or sailors. Provision is made for the erection of buildings by the State, and the board of county commissioners of each county is authorized to erect at its expense a cottage upon the grounds. Admission is granted to all honorably discharged soldiers, sailors or marines who have served the United States in any of its wars, who have been residents of Indiana one year immediately preceding the time of their application and who may be disabled and destitute; also to the wives and destitute widows, over forty-five years of age, of such veterans.[4]

III. *Dependent Orphans of Soldiers and Sailors.* It has already been stated that with the founding of the Soldiers' Home in 1867, the institution was made a refuge for the

[1] See *Message of Gov.* Baker, 1871, *Doc. Journ.*, 1870–1, vol. ii, p. 33.

[2] Forty-two in number.

[3] *House Journ.*, 1895, p. 60.

[4] *Laws*, 1895, pp. 40–4.

orphans of soldiers and seamen. Indeed, this was its most important feature from the beginning. After the removal of the soldiers to the National Soldiers' Home, the management insisted that there was still necessity for the maintenance and enlargement of the orphan department. They urged that when the time should come that the orphans of the soldiers would be insufficient to fill the institution, the destitute orphan children then in the county asylums in large numbers should be given a home there.[1] The institution was continued under the name of the Soldiers' and Sailors' Orphans' Home.

The purposes of the institution are (1) to support the destitute orphans and children of soldiers and sailors, (2) to afford them opportunity to acquire a fair education, and (3) to teach them some trade or industry by means of which they may be self-supporting.

IV. *The Feeble Minded.* While provision had been made by the State for the education of the blind and the deaf and dumb, and for the treatment of the insane, there was a large class of unfortunates for whom nothing had been done. The laws did not permit the admission of idiots or imbeciles to the Hospital for the Insane. As most of this class were also indigent, they constituted a considerable proportion of the "poor-house" population.

Forty years ago this question received consideration in the House of Representatives. But the committee, while convinced of the feasibility and utility of educating this class of persons, felt it necessary to report that no enterprise of the kind should be entered upon at that time because of the embarrassed state of the public finances.[2] Ten years later another proposition met a similar fate. In 1873 the Gov-

[1] *Reports of Trustees and Superintendent of the Soldiers' and Seamen's Home for* 1872, pp. 5, 6, 16, 17–19.

[2] *House Journ.*, 1861, pp. 717–8.

ernor recommended an experiment in this direction. He insisted that there was an urgent necessity for the establishment of a school for the education of idiotic and feeble-minded children.[1]

In 1879 public sentiment had reached the point where it demanded some action. Provision was made for the organization and support of an Asylum for Feeble-Minded Children. The management was entrusted to the same board which had the control of the "Soldiers' and Sailors' Orphans' Home." It was the duty of the board of county commissioners to apply for the admission of any feeble-minded child that had no living sane parent or guardian in Indiana. Where the parents were able to do so, wholly or in part, they were required to support the child or children whose admission they applied for: otherwise the support was furnished by the State.[2] The latter class constituted ninety per cent. of the inmates.[3]

Public sentiment evidently did not approve of the union of these two institutions under one management. As the experiment had been amply justified by its results, provision was made for a separate school at Fort Wayne. The name was changed to the Indiana School for Feeble-Minded Youth. The management is placed in the hands of a bipartisan board of trustees, who are appointed by the Governor and are removable by him at any time, for cause stated in the order of removal. Feeble-minded, idiotic, epileptic and paralytic children under sixteen years of age are admitted when proper application is made. Under the law of March 8, 1901, the board of trustees are required to set apart a portion of the institution to be known as "the

[1] *Message of Governor* Baker, *Doc. Journ.*, 1873, p. 8.

[2] *Laws, Spec. Sess.*, 1879, p. 76.

[3] *Rep't of Supt. of the Asylum for Feeble-Minded Children*, 1880, p. 9.

custodial department for adult females," for the care of dependent feeble-minded women who are over sixteen and under forty-five years of age. Such persons are committed only upon the order of the Judge of the Circuit Court after public hearing.[1]

That portion of the institution designed for the care of children is divided into two distinct departments: one, industrial, for the children capable of improvement, in which are taught the common school branches and manual and industrial training; the other, custodial, an asylum for low-grade feeble-minded, idiotic or epileptic children, in which special attention is given to mental, physical and hygienic treatment. The grades are kept separate. The costs of transmission to the asylum are defrayed by the counties or by the applicants. The expenses of support are paid by the State, except when parents or guardians wish to enter children for treatment, training or improvement; in such cases the applicant must support the child.[2]

Those who expect great things from the school in the way of education are sure to be disappointed. According to the opinion of those most capable of judging, it is doubtful if ten per cent. of the children sent there can ever make sufficient advancement to become self-controlling citizens.[3] While this is true, it is also claimed with good reason, that probably a majority of them may be trained so as to become entirely self-supporting under the control and direction of the institution. Still another class, though not so capable, may perform much useful labor. So the institution has become not merely a school for the training of the feeble-minded youth, but "a permanent home for all its graduates who

[1] *Laws*, 1901, pp. 156–8.

[2] *Laws*, 1887, pp. 46–53; 1889, pp. 129–133; 1901, pp. 156–8.

[3] *Rep't Bd. State Char.*, 1893, p. 56.

need the care and protection which, for most of them, only it can give."[1]

V. *Other State Institutions Proposed.* As further evidence of the growing disposition to provide for the unfortunate in State institutions, when that can be done most efficiently and economically, mention will be made of some recent proposals looking to that end. As early as 1852 it was stated, that a part of the ultimate plan of the management of the Institute for the Blind was to offer permanent employment to pupils who wished to remain after completing their course.[2] Little interest was taken in this plan until recently. In 1895 and 1899 bills for an act to provide for the establishment of an industrial home for the blind were introduced in the Legislature, but failed to pass.[3]

Many eminent students of social science maintain the opinion that it is the duty of the State to extend its protection and its reformatory and restorative influence to the unfortunate class of inebriates. The views of these philanthropists are well set forth in the following extract from the Report of the Superintendent of the Hospital for the Insane: "The State should regard every person who has not sufficient moral inclination or will power to refrain from habitual intoxication, as of unsound mind, and should assume guardianship of such persons under proper restrictions and limitations with a view to, (1) the restoration of the citizen; (2) the protection of society; (3) the self-sustenance of the individual."[4] Since 1861 several bills have been introduced in the General Assembly to provide for the establish-

[1] *Rep't State Supt. Pub. Instr.*, 1897, pp. 195–6.

[2] *Rep't Supt. of Institute for the Blind, Doc. Journ.*, 1852–3, Pt. ii, p. 132.

[3] *Sen. Journ.*, 1895, pp. 175, 782.

[4] *Report of Supt. Hosp. for Insane*, 1872, p. 30.

ment of an inebriate asylum under State control; but none has been favorably acted upon.[1]

In 1895 bills were introduced in both houses proposing to establish a State school for instructing dependent and neglected children before having them placed in private families.[2]

A bill for the establishment of a village for epileptics would doubtless have been enacted into a law in 1901, had the situation not been complicated by the demands made for other heavy appropriations.

Nearly fifty years ago Governor Wright expressed the opinion that when the building (then under construction) for the education of the blind, was finished, "we shall have completed the circle of the benevolent institutions of the State, which form its pride and honor."[3] To-day there is probably no one in Indiana who has seriously studied the complex problem of charity and correction that would indorse this optimistic judgment. The need of further differentiation between the local and central administration of charity is being more and more clearly seen.

3. THE DEVELOPMENT OF THE PENAL SYSTEM PRIOR TO 1890.

I. *Period of Decentralization.* One of the first legislative acts of the Governor and Judges of the Northwest Territory was the adoption of a law defining crimes and fixing penalties.[4] It sanctioned the following punishments: death, imprisonment in gaol, whipping, exposure in the pillory, forfeiture of estates, fines, restitution, binding out at labor

[1] *House Journ.*, 1861, *Reg. Sess.*, pp. 377, 788; 1895, pp. 295, 684; 1897, pp. 374, 883. *Sen. Journ.*, 1861, p. 707; 1895, pp. 85, 846. See also *Rep't Directors Ind. State Prison North*, 1892, p. 7.

[2] *House Journ.*, 1895, pp. 88, 349; *Sen. Journ.*, 1895, pp. 72, 387.

[3] *Message, Doc. Journ.*, 1852–3, Pt. i, p. 32.

[4] Chase, *op. cit.*, i, p. 97.

and incapacitation from giving testimony, serving as juror or holding any office. In 1795[1] and 1798[2] there were added to this list commission to the workhouse at hard labor and the sale of the services of an offender for a period not to exceed five years.

In the earliest days the guard-houses of the forts were occasionally used for the detention of prisoners.[3] It was in 1792[4] that the Legislature first directed court houses, jails, pillories, stocks and whipping posts to be erected in every county not having the same already established. Evidently some of these instruments and institutions had been doing service before their use was legally authorized. They were put in charge of the sheriff of the county. The materials,[5] plans and dimensions of jails were to be determined by the judges of the court of common pleas.[6] But these officers did not have full discretion. The law required separate apartments for debtors and for persons charged with, or convicted of, crime. Although each county was required to defray the expense of erecting and repairing such buildings, the Governor and Judges of the Territory had an important check upon the amount of expenditures. An estimate of the probable cost was submitted to these officers, who directed the raising of such part of it as they deemed necessary.

At the same time an act was passed for the better regulation of prisons.[7] It was made the duty of the justices of the court of quarter sessions of the peace at the beginning of each session, to inquire into the state and sufficiency of

[1] Chase, *op. cit.*, i, p. 146.

[2] *Ibid.*, p. 205.

[3] *St. Clair*, *op. cit.*, ii, pp. 219–222.

[4] Chase, *op. cit.*, i, p. 122.

[5] The early jails were almost always made of logs. One of these is still used.

[6] In 1799 this authority was given to the court of general quarter sessions. Chase, i, p. 275.

[7] Chase, *op. cit.*, i, pp. 123–125.

prisons and the condition and accomodation of prisoners. This examination must have been intended chiefly to insure the security of the jail. For in those days not much consideration was paid to the comfort and convenience of prisoners. The law required public provision of "meat and drink" for only those prisoners who had no means of supplying themselves; and these, except in the case of criminals, were required to reimburse the sheriff upon their release. All other occupants of the jail were furnished at public expense with only "daily bread and water." The arrangements seem to have been inadequate; for Governor St. Clair, in 1798 and again in 1799, complained of the inconvenience which had been experienced from the want of sufficient jails in the several counties.[1] The early laws indicate the prevalent harshness towards offenders against the public order. The penal system was deterrent and retributive; not correctional and reformatory. Little sympathy was wasted upon the criminal or even the unfortunate debtor. The management of institutions was regarded almost wholly as a matter of local concern and, except over the expenditure for county buildings, no attempt at central control was made. There was almost no immediate change made upon transition to statehood.

The provisions in the Constitution of 1816 relating to a system of correction are found in Articles I and II, where it is declared, that no person confined in jail shall be treated with unnecessary rigor;[2] that no cruel and unusual punishments shall be inflicted;[3] that all penalties shall be proportioned to the nature of the offence;[4] and that it shall be the duty of the General Assembly as soon as circumstances will

[1] *St. Clair*, ii, pp. 431, 456.

[2] *Constitution*, 1816, art. i, sect. 12.

[3] *Ibid.*, art. i, sect. 15.

[4] *Ibid.*, art. i, sec. 16.

permit to form a penal code founded on the principles of reformation, and not of vindictive justice.[1]

The act of January 21, 1818, re-enacted the former territorial laws with slight modifications.[2] The State supervision over the cost of public buildings was abandoned. The authority to erect jails was granted to towns in 1824[3] and to cities in 1852.[4] The common council of Lafayette was in 1839 empowered to erect and provide for the support of a workhouse for the punishment of offenders against the ordinances of the town.[5] It was forty years before this method of dealing with misdemeanants was made applicable by a general law to all counties.[6]

II. *The Period of Centralization and Differentiation.* (*a*) *The State Prison.* The first important step tending towards the centralization of the penal system was taken in 1821.[7] The General Assembly in that year appointed certain persons who were to constitute a board of managers for building and governing a prison to be located at Jeffersonville. The board was granted power to fill vacancies in their own body; to make their own rules and regulations for the government and employment of convicts, and to appoint an agent and other officers. The agent was vested with the direct management of the institution, and all business was to be transacted in his name. He was required annually "to lay an account of his proceedings under this act before the General Assembly." His books were to be examined each month by the managers, who were enjoined to remove the agent or any other officer guilty of misconduct. The agent, with the consent of the managers, was authorized to contract

[1] *Constitution*, 1816, art. ix, sec. 4.

[2] *Laws*, 1817–8, pp. 218–222.

[3] *Rev. Stat.*, 1824, p. 417.

[4] *Rev. Stat.*, 1852, i, p. 211.

[5] *Spec. Laws*, 1838–9, p. 27.

[6] *Laws, Spec. Sess.*, 1879, pp. 247–9.

[7] *Laws*, 1820–1, pp. 24–29.

with the Jeffersonville and Ohio Canal Company for the employment of able-bodied convicts in labor on the canal. Persons thereafter convicted of any offense for which under the existing laws they would have been liable to punishment by stripes, were to be imprisoned and confined at hard labor. Three thousand dollars, arising from the sale of lots at the seat of the government, were appropriated towards building the prison.[1] It is evident from a reading of the act that the State was relying in part upon subscriptions by private individuals to complete the building fund. After deducting all expenses of the institution the State's share of the earnings of the convicts was to be invested in canal stock for the benefit of the State; the share of earnings belonging to individuals was to "be apportioned in such manner as the managers may direct their agent to contract with such individuals on their subscribing." The privileges granted by the act were to continue for eight years; provided, the prison were ready for the reception of convicts by October 1, 1821, and, provided, a subsequent legislature did not establish it as a permanent State prison by buying out the interest of the subscribers.[2]

One cannot escape the conviction that the chief motive back of this act was to provide labor for the construction of the Jeffersonville and Ohio Canal, of which the State was part owner. Its leading purpose was speculative and not reformative or protective. The degree of centralization secured by this law was really less than it appeared. For while certain prisoners were gathered together into one place, their entire discipline and employment were surrendered to this semi-private corporation. The terms of imprisonment were fixed by the Legislature just as the degrees of other punishments.

[1] During the next five years small appropriations were made for defraying the expenses of the prisons. *Laws*, 1821–2, p. 91; 1822–3, p. 129; 1823–4, p. 95.

[2] *Laws*, 1820–1, pp. 26–7.

Owing to the unsatisfactory results of the experiment, the board of managers and the agency were abolished in 1824. The Governor was authorized either to appoint a superintendent, to whom the whole management, government and control of the prison should be entrusted; or to let out the prison under contract for a period of three years. The superintendent or contractor was required to transmit quarterly to the Secretary of State full accounts of the prison. The Governor had authority to appoint persons to examine the prison thoroughly and to report to him. The superintendent was required to keep a book for the entry[1] of full descriptions of the prisoners and to send a transcript of it monthly to the Secretary of State.[2]

The second alternative was chosen and an agreement was entered into which seemed very satisfactory to the executive. The contractor undertook to be at the whole expense of keeping the convicts and to pay to the State in addition the sum of $1,650,—$850 of which were to be expended in improvements. "These terms are highly favorable to the State, and are another proof in favor [?] of this mode of punishment, and of the judicious location of the prison."[3]

In that day the number of convicts in the State Prison was small both relatively and absolutely. The population was widely scattered and the criminal element was not large. Offences were frequently punished by "regulators" without resort to the courts. Offenders convicted before the courts were usually punished by death, whipping or imprisonment in the county jails. The cost of transportation of persons to the State Prison was another factor which kept down the

[1] The entry included the name, trade or occupation, age, size, complexion and complete description of every prisoner, day of entry, day of expiration of term offence, county from which sent, and place of birth.

[2] *Rev. Stat.*, 1824, pp. 395–400.

[3] *Message of Governor*, 1828, *Sen. Journ.*, 1828–9, p. 18.

number confined in it. The number reported to the House of Representatives for October 31, 1830, was but thirty-four, of whom ten were under twenty-one years of age.[1] This means that but one person in ten thousand was confined in the State Prison.

The leasing system proved very unsatisfactory. The House committee on the State Prison reported in 1840, that from all that could be gathered from the report of the visitor (which the committee deemed very defective and unsatisfactory) and from the letters of the superintendents themselves, they were compelled to believe that the State Prison was under very bad management in many particulars. There was no regular system of discipline and no means in practice for the improvement of convicts. The committee did not hesitate to say "that the present plan of leasing out . . . the State prison, and the unfortunate convicts . . . is the most ill-advised and pernicious of any that has prevailed in this country or elsewhere." They recommended that provision be made for a more rigid inspection and examination and that, after the expiration of the lease, the prison be placed under the management of inspectors with such restrictions and discipline as would secure a more humane administration.[2] For the next fifteen years similar reports were made almost annually by the visitor of the prison, the Governor or legislative committees. The financial condition of the State did not, in the opinion of the legislators, justify so great an expenditure as any change would necessitate.[3] The evils continued to increase in spite of provisions for closer inspection. In the superintendent's report for 1841, the startling admission was made, that one-eleventh of the whole number had died within a period of four months. He

[1] *House Journ.*, 1830–1, pp. 207–211.

[2] *House Journ.*, 1839–40, p. 833–4.

[3] *Doc. Journ.*, 1840–1, *House Rep'ts*, p. 322.

attributed this in a great degree to a want of proper ventilation.[1]

In 1846 the policy of leasing the prison was reaffirmed; but the internal management and discipline of the convicts were placed in the hands of a warden, elected by the General Assembly for a term of three years. He was removable at any time by the Governor for violation of his duties and was required to make annual reports to the Legislature.[2]

In 1855 the system of leasing the prison was abandoned. The institution was placed in the hands of three directors elected by the General Assembly for a term of three years. They selected the warden, who managed the prison under rules and regulations made by the directors and warden.[3] The management in 1857 was given the right to hire out the convicts to contractors.[4] Though not an ideal system, this was an improvement upon the old; for it placed the complete management under State officials.

As the State increased in population, the capacity of the prison became insufficient, and in 1859 the construction of another was authorized.[5] When it was occupied in 1860, it was placed under a separate management.

In 1861 a system of commutation was introduced in both prisons under which the term of service of each convict might be shortened by deductions made for good behavior.[6] This law had a very salutary effect upon the conduct of prisoners.

(*b*) *The Reform School for Boys.* One of the evils connected with the prison system was the indiscriminate mingling of juvenile offenders and hardened and vicious criminals. This had been early recognized.

[1] *Rep't Supt., Doc. Journ.*, 1841–2, *House Rep'ts*, p. 504.

[2] *Spec. Laws*, 1845–6, pp. 35–7.

[3] *Laws*, 1855, p. 195–201.

[4] *Ibid.*, 1857, pp. 103–110.

[5] *Ibid.*, 1859, pp. 135–8.

[6] *Laws, Reg. Sess.*, 1861, pp., 166–7.

By an act of 1841, it was left to the discretion of the jury to determine whether a minor guilty of an offence punishable by imprisonment in the State prison, should be confined for a determinate period in the county jail in place of the State Prison.[1] It may well be questioned whether confinement in the county jail gave any better chance for the reformation of the juvenile offender than imprisonment in the State Prison would afford. Governor Wright is found urging in 1850 that the "county prisons should be converted into workshops—into houses of industry—wearing the appearance of decency and order."[2]

Evidently this law did not provide the proper remedy. In the Constitutional Convention it was shown, from a detailed statement submitted by the warden of the State prison, that the whole number of convicts committed from 1822 to 1850 was 1131, "of which 157 (more than one-eighth of the whole number) were minors . . . and some of these as young as eleven years."[3] The members of the convention were so impressed with the injustice and imprudence of continuing this condition that they incorporated into the fundamental law a mandatory clause declaring: "The General Assembly shall provide Houses of Refuge for the correction and reformation of juvenile offenders."[4] But it required fifteen years more of importuning on the part of large-hearted officials and other philanthropists to induce the Legislature to establish a "House of Refuge." This was finally done in 1867.

The institution was designed to receive boys under the age of eighteen, committed because of incorrigibility or vicious

[1] *Laws*, 1840–1, p. 184.

[2] *Message of Governor*, 1850, *Doc. Journ.*, 1850–1, Pt. i, p. 112.

[3] *Debates of Const. Conv.*, 1850–1, p. 1903.

[4] *Constitution*, 1851, art. ix, sect. 2.

conduct, lack of suitable homes and means of living[1] (in certain cases), or because of conviction of crime. The board was to employ those methods of discipline which would, as far as possible, "reform their characters, preserve their health, promote regular improvement in their studies, trades and employments, and secure to them fixed habits of industry, morality and religion." The State was to defray one-half the cost of keeping the inmates; the other half, together with the entire cost of transportation, was to be paid by the county from which each boy was sent.[2] In 1883 the name of the institution was changed to the Reform School for Boys. It is managed by a board of three commissioners appointed by the Governor.

(*c*) *The Woman's Prison and the Industrial School for Girls.* Though the Act of 1821 establishing the State Prison did not specifically require the imprisonment of women therein, its terms were general enough to include them and such was the interpretation given the law. Three years later we find that women might be sentenced to the county jail, instead of the State Prison, as the court or jury should think best.[3]

Up to 1847 but four women had been received at the State Prison.[4] The warden in that year declared that "if it be the future policy of the State to convict females to the State Prison, the dictates of humanity and a decent respect for the usages of society alike demand that an apartment for their use be provided separate from that of the males."[5] This was done, and provision for the appointment of a matron at the State Prison was made.

[1] No boy can now be sent to the Reform School merely because he is dependent. *Laws*, 1883, p. 21.

[2] *Laws*, 1867, pp. 137–145.

[3] *Rev. Stat.*, 1824, p. 151.

[4] *Rep't of Warden*, *Doc. Journ.*, 1846–7, Pt. ii, p. 45.

[5] *Ibid.*, *Doc. Journ.*, 1847–8, Pt. ii, p. 131.

In 1867 it was provided that when any city or any private persons had established a "Home for Friendless Women," the Court might, at its discretion and with the consent of the authorities of such Home, with a view to reformation as well as punishment, commit to it any woman or girl convicted of any offence, the punishment of which might be imprisonment. The trustees of the Home were to be governed in the control of such persons by the laws of the State.[1] This was a step in the right direction. Two years later, after repeated appeals, the Legislature authorized the establishment of "The Indiana Reformatory Institute for Women and Girls."[2] In 1899 the two departments were made distinct.[3]

(*d*) *The Reformatory.* The latest phase of this process of differentiation is the reformatory. More than thirty years ago Governor Baker anticipated the need of this institution and had a very definite idea of its purpose and details. He said: "There should, when increased prison accommodations are required, be established an intermediate prison, between the house of refuge and the present State prison, to which the more youthful and less hardened offenders shouid be sent, and where reformatory influences would be exerted over the prisoners to a much greater extent than is possible in our existing penitentiaries." He also recommended that power be lodged somewhere to remove incorrigible prisoners from the intermediate prison to the penitentiaries, and to transfer, also, prisoners who by their good conduct for a series of years should give evidence of reformation, from the penitentiary to the intermediate prison.[4] This ideal was not realized until 1897. A fuller discussion of the recent reforms in penal administration will be given in the following section.

[1] *Laws*, 1867, pp. 228–9.

[2] *Laws, Spec. Sess.*, 1869, pp. 61–72.

[3] *Laws*, 1899, p. 22. See sect. 4, vii (c), below.

[4] *Message*, Jan. 8, 1869, *Sen. Journ.*, 1869, *Reg. Sess.*, p. 44.

4. CENTRAL INSPECTION AND SUPERVISION

Prior to 1889 the most serious defect of the charitable and correctional systems, both local and State, was the absence of any comprehensive scheme of inspection and supervision, which would secure for State officials and the public generally, unbiased information as to the efficiency of the institutions and the economy in their administration.

I. *The Development of Central Control over Local Agencies Prior to 1890.* In respect to the local administration there was scarcely a trace of central organization and even little effective local control. Since 1792 it has been the duty of the court of quarter sessions of the peace, the court of common pleas, or the grand jury to examine the condition of jails and prisoners. Even in the first years of statehood the conditions appear to have been bad, for the Governor in 1818 declared: "The situation of many of our prisons is calculated to invite disease upon limited confinement therein, and to inflict punishment before trial."[1] Since 1799 overseers of the poor have been required to see that paupers bound out to service were properly cared for, and to make some kind of returns to the boards transacting the county business. In 1831 the directors of the poor asylums, and later the contractors who agreed to care for the poor, were required to report to the county board. In 1843 the county commissioners were required to visit in person the county asylums and to exact reports from the superintendents.[2] In 1852 they were relieved of this duty and were given discretion to appoint annually a board of visitors, to consist of one person from each township or a less number, to visit at least once during the year the county asylum and to report its condition to the commissioners.[3] Six years

[1] *Message of Governor*, 1818–9, *House Journ.*, 1818–9, p. 21.

[2] *Rev. Stat.*, 1843, p. 361.

[3] *Ibid.*, 1852, i, pp. 401, 407.

later, whenever any grand jury should condemn a jail as unsafe or should recommend better provision and accomodation for the prisoners, it was made obligatory upon the county commissioners to cause the jail to be repaired and to provide sufficient air, heat and ventilation.[1]

In 1867 any home for friendless women in which girls or women were imprisoned by order of the Court, was declared subject to inspection by the Court or any grand jury, the Governor or any other State officer, any committee of the General Assembly, the council of any city or the board of commissioners of any county in which it was situated.[2] This right of inspection by State officers was demanded, not because of a belief in the advantages of central supervision over local institutions, but because such "Homes" partook of the nature of State institutions. They, instead of the State prison, might be used as places of confinement for girls and women convicted of crimes against the State. But the law was permissive only, not mandatory.

In 1867 and 1875 counties or cities that paid for the maintenance of orphans in private institutions were declared entitled to representation on the boards of control.[3] In 1879 the inspection of workhouses was made obligatory upon the grand jury and discretionary upon other officers.[4] In 1881 the grand jury was declared to have, during the term of court, free access to the county poor-house, for the purpose of examining its condition and management; but this duty was not obligatory.[5] In this same year the authority of county commissioners to appoint boards of visitors[6] was reaffirmed in the Revised Statutes.[7]

The right of inspection of orphanages by both local and

[1] *Laws, Spec. Sess.*, 1858, pp. 41–2.

[2] *Ibid.*, 1867, p. 228.

[3] See page 151 above.

[4] *Laws*, 1879, pp. 247–8.

[5] *Rev. Stat.*, 1881, sect. 1667.

[6] See page 175 above.

[7] *Rev. Stat.*, 1881, sect. 6101.

State officials was very explicitly and positively established in 1889. It was declared that any "Orphans' Home," whether organized under any law of the State or whether established by private charity, should, at all reasonable hours, be open and subject to the inspection of any Circuit or Superior Court, any grand jury, the Governor, any other State officer, any member or committee of the General Assembly, of the council of any city or of the board of trustees of any town, or board of commissioners of any county, the county superintendent or the township trustee of the township wherein such home was situated.[1] While the right of inspection was thus assured to numerous officers, it was not made obligatory upon any of them. The division of responsibility really meant no responsibility. The law is significant, because it recognized more fully than any previous statute the principle that the State has the right, and is bound to exercise an inspection of local institutions for the care of the dependent.

This brief survey shows how slow was the growth of the theory and practice of central supervision and inspection over local penal and benevolent institutions. The State had not yet devised any adequate means of acquiring reliable information as to their condition. The county boards of visitors were seldom appointed, and their reports were meagre. The conclusions of grand juries were almost never given to the public, except in a very general way. Besides, the jurors were not especially trained in observing defects, and very often failed to detect evils which a specialist would have seen at once. In addition, there was an urgent need for some central supervision which would increase the efficiency and reduce the cost of these institutions.

II. *The Imperfect Supervision of State Institutions Prior to 1890.* It would seem to be a matter of course that the

[1] *Laws*, 1889, pp. 215–8.

State would exact complete and accurate reports of the financial condition and the public usefulness of institutions maintained by funds appropriated out of the State treasury. But the means to that end which were provided by law did not always prove efficacious.

Reports as to the State prison were furnished to the General Assembly at first[1] only by the superintendent who had simply a financial interest in the management of it. Later[2] the Governor was given authority to appoint a visitor to make examination and report to him. These reports were often unsatisfactory, because the visits were made but once or twice a year and were of short duration. The next step[3] was to provide a warden as the representative of the State, who was charged with the internal police of the prison and who, of course, was constantly present. Even then there was great opportunity for collusion. Six years later the offices of chaplain and physician were created. These officers were appointed by the Governor and were to make annual reports to him. When the leasing system was abandoned in 1855, the office of visitor was abolished, and reports were required from the directors, the warden, and the moral instructor. When the Indiana Reformatory Institution for Women and Girls was established in 1869, the Governor was given authority to appoint, from time to time, a board of visitors.

In the case of the benevolent institutions the regular media for obtaining knowledge of their condition were the annual or special reports of the superintendent and boards of directors.[4]

[1] In 1821; see page 167 above.

[2] In 1824 and 1831; see page 169 above.

[3] In 1846; see page 171 above.

[4] A notable exception of the early period was the right given the Governor in 1833 to appoint a visitor to examine thoroughly the St. Joseph Orphan Asylum (a private institution), and to report to the General Assembly. *Laws*, 1832–3, pp. 75–77.

Besides these sources of information, there were also the investigations conducted by committees of the Houses of the General Assembly, jointly or severally. These were not infrequent, but their value was neutralized by the political motives which generally prompted them, and the partisan bias which often marked their reports.

III. *The Establishment of the Board of State Charities.* The importance of better control over all penal and benevolent agencies, and more accurate statistical information concerning them, was recognized by the governors many years before these reforms were secured. Governor Baker said in 1872: "There ought to be a supervisory board having control of all prison officers with power of suspension or removal for cause during the vacations of the General Assembly. Under the existing arrangements the grossest abuses may exist when the General Assembly is not in session, but there is no power to interfere."[1] Governor Hendricks, five years later, expressed the opinion that the management of the benevolent institutions should be conducted more economically. He thought that the boards of trustees did not give that protection to the State which was intended. Their visits were rather hasty and perfunctory; their investigations not thorough, and their control not rigid. He suggested that an improvement might be secured by placing them all under one board to be appointed by the Governor with the approval of the Senate.[2]

A fuller control over the management of the benevolent institutions[3] was granted to the Chief Executive in 1879. A law was enacted which gave the Governor power to remove any of the trustees of these institutions "upon failure to

[1] *Message of Governor* Baker, *Doc. Journ.*, 1872, p. 18.

[2] *Message of Governor* Hendricks, *Doc. Journ.*, 1876–7, pt. i, pp. 10, 12.

[3] The Asylum for the Blind, the Institution for the Education of the Deaf and Dumb, and the Hospital for the Insane.

faithfully discharge his duties, or for any insufficiency, or any other cause that to him may seem just, with opportunity to the party to answer and defend himself against the charges, he being suspended during the inquiry." The Governor was required to submit a statement of the cause of any removal to the Senate.[1] This was an important step towards a real responsibility resting upon the Governo

Four years later the appointment of these boards of managers was taken from the Governor and vested in the General Assembly. Such appointees could be removed only by the order of the Circuit or Superior Courts of Marion County, after a proper hearing.[2] The purpose of these changes was not to promote the highest interests of the public service, but to serve the purposes of political parties by supplying them with the spoils of office. General Harrison, in a speech delivered in 1887, declared that "these institutions are now from top to bottom managed solely and simply as houses of patronage."[3]

The legitimate results of this condition were the scandals of 1887 and 1889.[4] A leading journal commented upon one of these as follows:

"The investigation now in progress shows that the management at that institution [Central Hospital for the Insane] has been inefficient and corrupt for several years past. The men who were chosen, in good faith, to carry on the affairs of the hospital, have proved recreant to their trust. . . . . They have reflected infinite discredit upon the

[1] *Laws, Reg. Sess.*, 1879, p. 5. [2] *Ibid.*, 1883, pp. 16.

[3] Quoted by Governor Mount in an address on *Non-partisan Management of State Institutions*, in *The Indiana Bulletin of Charities and Corrections* for June, 1901, p. 13.

[4] *Sen. Journ.*, 1887, pp. 656, 661, 706, 767, 885, 946, 1004; *House Journ.*, 1887, pp. 831, 856, 879; 1889, p. 38.

party which had so highly honored them. * * * The lesson of it all is that something else than mere party service must be considered in filling these important and responsible positions."[1] It had become obvious to all that legislative committees could not successfully investigate the condition and workings of the benevolent, reformatory and penal institutions during the session of the General Assembly. What was needed was a permanent official board endowed with power to make thorough examinations at any time and to submit their conclusions, with any recommendations, in formal reports to the Chief Executive of the State. This had been advocated for several years;[2] but no legislation was secured until these public scandals focused the popular attention upon the questions of the management and discipline of the prisons and the institutions created for the dispensation of charity.

The Board of State Charities was finally created by law in 1889. In the words of the Attorney-General, the " act was passed to correct the abuses which had existed in some of our State and local institutions, and also to lift the management of such institutions to a higher plane by the dissemination of a knowledge to the officers governing them of modern and efficient methods in the care and treatment of the unfortunate and delinquent classes."[3]

IV. *The Powers and Organization of the Board of State Charities.* The Board of State Charities is composed[4] of

[1] *Indianapolis Sentinel*, March 9, 1889, p. 9, quoted in *Bulletin Char. and Cor.*, June, 1901, p. 14.

[2] See *Message of Governor* Gray, *House Journ.*, 1881, pp. 64–5; *Inaugural of Governor* Porter, *House Journ.*, 1881, p. 80; *Rep'ts in Sen. Journ.*, 1879, pp. 286, 440; and 1881, pp. 113, 477.

[3] *Opinions of Attorney-General*, 1890, p. 191.

[4] *Laws*, 1889, pp. 51–2.

seven members—the Governor and six other persons appointed by him, three being from each of the two leading political parties. The term of office of each is three years, two retiring annually. The members serve without compensation. The Governor is the president of the Board. It meets regularly once each quarter, and more frequently if necessary. It appoints a salaried secretary, who is the chief executive officer of the Board. The Board is divided into six committees. This permits concentration of effort; at the same time the division is not so distinct as to prevent any member of the Board from acquiring familiarity with all the lines of activity and inquiry.[1] There have been few changes in its membership. While there have been in the thirteen years three secretaries, the two former officers resigned to render service in other fields of philanthropic work.

The law gave the board authority to investigate the whole system of charitable and correctional institutions of the State and to examine into their condition. They had power to require the presence of persons, the production of papers and the submission of such information and statistics as they deemed proper. The report of any investigation, with their recommendations, was to be submitted by the Board to the Governor. They had power to prescribe forms of reports and registration and to criticise and suggest changes in the plans of jails and infirmaries which county authorities were required to present to them before their final adoption.[2]

The Board adopted a rule providing that all State charitable, penal and reformatory institutions should be visited at least quarterly by the Secretary, and annually by the committee having supervision of the same, and might be visited annually or oftener by the whole Board; and that all local institutions should be visited annually by the Secretary and,

[1] *Report of Board of State Charities*, 1893, p. 14.

[2] *Laws*, 1889, p. 52.

if emergency might require it, by the proper committee or the whole Board.

In some quarters fault was found with the law under which the Board was organized, because there was granted to it no executive power to reform abuses; consequently its inspections, it was said, would be valueless. The Board made no complaint of its lack of powers, but set about its work in a quiet way. The spirit with which it strove to accomplish its high purpose may be seen in an extract from its second report. "The duties undertaken by this Board in March, 1889, were new to the State of Indiana. They were vague, ill-defined and little understood. There were no precedents to guide us. With unrestricted rights of investigation and inspection it has no active powers but those of moral and spiritual influence. Its usefulness must be, if at all, by the methods of convincing and conciliating, not of commanding." [1]

V. *The Board of State Charities and the Local Penal Institutions.* It must be admitted that the Board of State Charities has had little influence upon the conditions in, or the management of, county jails. Neither their advisory powers nor their influence upon legislation have sufficed to abolish the evils that have prevailed so long. There has been some improvement through the efforts of officers, urged by the Board, to secure greater cleanliness, better ventilation and stricter discipline. But in many cases the jails are still foul and unwholesome and lax in discipline. The worst evil is their moral condition. "Therein are gathered together the professional criminal and the inexperienced boy, the unfortunate who is held as a witness and the infested tramp. They are not separated, but congregate together, becoming a moral pest-hole, a training school in crime." [2]

[1] *Rep't Bd. St. Char.*, 1891, p. 14.

[2] *Rep't Bd. St. Char.*, 1899, p. 97.

The Board has repeatedly urged provision for the complete separation of the sexes, thorough classification of the inmates, and a separate cell for each person. These desirable ends cannot be attained without reconstructing in whole or in part very many jails. To many tax-payers and officers, these changes would seem to entail an unnecessary and unwarranted expenditure of money. It may, therefore, be some time before these reforms are realized. There has been vast improvement in the new jails erected within the past decade. The suggestions of the Board in regard to them have been cordially received and plans have often been modified for the better.

In 1901 the Legislature acting upon the recommendation of the Board passed a law requiring the appointment of a prison matron in any county having a population of 50,000.[1] It is her duty to have charge of the woman's department of the jail.[2] But this is only a very short step towards the realization of that ideal system in which the State shall have control of all minor prisons, and jails shall be used only for purposes of detention.[3]

The Board has recommended that for the punishment of minor offences district workhouses should be established, which should be reformatory in character and under non-partisan control.[4]

VI. *The Board of State Charities and Local Charity.* (*a*) *County Asylums.* In respect to the dispensation of local charity the Board has been more influential. The Secretary in his first report stated, that "the cruelty and avarice that existed in times past, if reports be true, are rarely or never seen. There are few who are intentionally negligent. Where abuses and defects exist, they are largely due to ignorance, to overwork, or to need of proper conveniences

[1] It has application in six counties.

[2] *Rep't Bd. St. Char.*, 1900, p. 11.

[3] *Laws*, 1901, pp. 304–5.

[4] *Ibid.*, 1900, pp. 11–12.

A general desire for improvement exists and the suggestions I have been able to make have been well received."[1]

The chief defects and evils noticed in the early reports, were the unsanitary construction of buildings; the imperfect separation of males and females; and the indiscriminate mingling of all classes and grades, the respectable poor with the depraved women and men, the orphan with the inveterate pauper, the sane with the insane, epileptic or idiotic. These conditions did not prevail in all poor asylums, nor all these conditions in the same asylum. Ten counties had in 1890 the pernicious "contract system," by which the care of all the paupers was auctioned off to the lowest bidder.[2]

(*b*) *Dependent Children and the State Agency.* The Board emphasized particularly the inhumane and uneconomical system under which the dependent children were being kept in schools of pauperism and the feeble-minded women were permitted to perpetuate their kind. In forty-eight counties no special provision for dependent children was made and, unless cared for by some private charity, such children were kept in the county poor asylums with adult paupers. Most of the institutions established for dependent children were managed by matrons who received from their respective counties a certain per diem allowance for each child cared for. The chief evils of this arrangement have been pointed out above.[3]

Largely through the influence of the Board these defects have, in a measure, been corrected. The chief remedies recommended[4] were: the extension of the law authorizing the appointment of boards of children's guardians so as to apply to all counties; the establishment of a State school for instructing dependent and neglected children in "the fundamental ideas of truthfulness, cleanliness and obedi-

[1] *Rep't Bd. St. Char.*, 1890, p. 21. [2] *Ibid.*, 1890. App., no. 2, p. 10.

[3] See page 152 above. [4] *Rep'ts Bd. St. Char.*, 1894, pp. 28–9; 1895, p. 34.

ence;" a complete system of placing-out under the supervision of the State; and the substitution of a mandatory law for the permissive one respecting the establishment of orphans' homes by county commissioners.

In 1897 a law[1] was enacted by which the State assumed direct supervision of the work for children, and in a way recognized the principle of State care. The statute prohibited the retention of children between the ages of three and seventeen in county poor asylums for a longer period than ten days.[2] County commissioners are required to provide for them in one of three ways. They may "establish and maintain asylums for the support, care, education, control and protection of orphan, dependent, neglected or abandoned children"; they may enter into contracts with associations organized for these purposes; or they may place such children in charge of the State agent, whose duty it is to find them suitable homes in private families. In order to prevent annoying interference on the part of the parents or guardians, they are required to make an absolute release of all rights over the children who are placed in any such charitable institutions.[3] It is made the duty of these associations to secure permanent homes for the children and to see by visits and reports that they are properly cared for.

For the better administration of the law the Board of State Charities is empowered to appoint a suitable State agent or agents to serve during its pleasure. It is the right and duty of every agent to inspect all orphan asylums and to report to the Board of State Charities and the commissioners of the county in which each asylum is situated. It is also his duty to seek out proper permanent homes for the children and to visit them regularly. If he believes that any child

[1] *Laws*, 1897, pp. 44–48.

[2] In 1901 this period was extended to sixty days. *Laws*, 1901, p. 406.

[3] If necessary the Circuit Court has power to render an order to that effect.

under his supervision is not receiving proper care and treatment, he has power to remove it from the private home in which it is placed, and return it to the association or county from which it came. Every association caring for children is required to send each month to the Board of State Charities the name, age and description of every child received, and of each child indentured during that period; and the name and place of residence of each person to whom any child has been apprenticed.[1]

At first there was a disposition on the part of the directors of both public and private orphanages, to resent what was called State interference on the part of the Board. But when these authorities fully understood the plans and purposes of the law, they heartily coöperated with the State agent.[2]

The law went into effect April 1, 1897. From that date to October 31, 1901, eight hundred and fifty-two children were placed in families. Of these six hundred and twenty-four, or more than 73 per cent. still remained off public support.[3] The following figures show the changes in the poorhouse population in the last decade:

	1891. Sept. 1.	1897. Aug. 31.	1899. Aug. 31.	1900. Oct. 31.	1901. Oct. 31.
Dependent children in poorhouses.	432*	232*	103†	49†	64†

* Children under 16 years of age. † Children under 17 years of age.

As it costs about $100 per annum to support a child in a county poor asylum, there was a saving of public expense for the year 1901 alone, of about $60,000. This financial benefit does not include that greater reduction of the future costs of pauperism and the improved moral and physical condition of the children.

[1] *Laws*, 1897, pp. 44–8.

[2] *Rep't Bd. St. Char.*, 1897, p. 33.

[3] *Rep't Bd. St. Char.*, 1901, p. 103.

The number of children reported as visited in 1901 is 1,069. Of these 841 were reported as "doing well," 158 as "doing fairly well," 70 as "doing poorly," 48 as "transferred," and 80 returned to the counties. The total number of children in orphans' homes October 31, 1901, was 1,690; in county poor asylums on the same day there were 64 children under seventeen.[1] Fifty-eight counties had no children under seventeen in their county poor asylums.[2] While there has been such a remarkable decrease in the number of children in the county poor asylums, it has not been attended by an unusual increase of children in the orphanages. The total number of juvenile dependents in all institutions in 1891 was 1,447 or 6.6 persons in each 10,000 of the population; in 1900 it was 1,682 or 6.64 in each 10,000[3].

In 1896 the average period during which children remained in the county asylums was affirmed to be not less than three years[4]. In 1900, by careful computation, it was shown to be a little less than one year and nine months[5]. In the Soldiers' and Sailors' Orphans' Home a greater effort has also been made to place the children in the care of private families[6].

It does not seem extravagant to predict that the following advantages which are claimed for the new law will be realized: (1) Tax-payers will be relieved by a reduction of expenditures; (2) Children will be taken from the county poor asylums; (3) The temporary storage of troublesome and unwanted children in orphan asylums will be discouraged and prevented; (4) Evils of aggregation in State institutions will be avoided and the benefits of a period of

[1] Twenty-seven of these were under three years of age, and hence not subject to the law.

[2] *Rep't Bd. St. Char.*, 1901, pp. 101, 103, 107, 112.

[3] *Rep't Bd. St. Char.*, 1900, p. 74.

[4] *Ibid.*, 1896, p. 27. [5] *Ibid.*, 1900, p. 148. [6] *Ibid.*, 1900, p. 42.

institution training will be secured; (5) The elasticity of the system will permit the exercise of individuality in the management of different institutions, allowing adjustment to local conditions; and (6) Local interest in child saving and local pride in home institutions will be preserved and fostered[1].

In 1901 a law was passed which authorizes, but does not require, the creation of a board of guardians[2] in each county. These boards are required to report to the Board of State Charities as often and in such manner as the latter may require[3].

(*c*) *The Feeble-Minded.* Another class of the poor-house population which has received more thoughtful consideration from the State Board of Charities is the feeble-minded. While the inmates of the School for Feeble-Minded Youth have increased in number from 378 in 1891 to 795 in 1901, there has been no diminution of the number of such unfortunates in the county asylums. On the contrary the number has increased within the same time from 834 to 916. Of these, 436 are females over fifteen years of age[4], many of whom are the mothers of from six to ten feeble-minded children. "It is not unusual to find in a poor asylum three generations of feeble-mindedness[5]."

The Board repeatedly emphasized the importance of the custodial care of the feeble-minded females[6], not only upon humane grounds, but also for reasons of economy as well. These women being incapable of defending themselves against the influences of immorality, become the mothers of

[1] *Rep't Bd. St. Char.*, 1897, p. 22.

[2] See pages 152–3 above for the powers of such boards.

[3] *Laws*, 1901, pp. 369–373.

[4] Of these 206 are between the ages of 15 and 45.

[5] *Rep't Bd. St. Char.*, 1899, p. 45; 1900, pp. 64–67; 1901, pp. 53, 71, 77.

[6] *Ibid.*, 1893, p. 66; 1894, pp. 7, 50–3; 1895, p. 12; 1900, pp. 15, 64–67.

children "usually illegitimate and almost invariably deficient mentally." The expense of supporting such women in a State institution would be little if any greater than the cost of maintaining them in county institutions; besides, the State would eventually be saved a great expense in the care or punishment of their progeny.

The logical and persistent advocacy of this plan by the Board of State Charities produced so deep an impression upon the philanthropists and the public generally, that in 1901 the Legislature enacted a law to carry out this policy.[1]

In regard to the male adult feeble-minded, the Board has expressed the opinion that the best solution of this problem is to be found in their colonization upon farms, where their energies might be directed into the most healthful, and, at the same time, most profitable channels.[2]

(d) The Administration of County Poor Asylums. Another recommendation which had been made by the Board of State Charities, was given legal sanction in 1899. County commissioners are now required to appoint a superintendent of the county asylum who serves for a term of two years unless sooner removed for cause. His salary is fixed by the board of county commissioners. This provision abolishes entirely the contract system which still existed in a few counties. The law enumerates certain qualifications as to character, disposition, executive ability, education and experience which are required of the superintendent; and then it proceeds to state; "No considerations other than character, competence and fitness shall be allowed to actuate the commissioners in the selecting, continuing or discharging any superintendent or other officer." It is the hope, perhaps delusive, that this advisory clause may serve to eradicate all evidences of partisanship from the control of the asylums.

[1] *Laws*, 1901, pp. 156–8. See also pages 161–2 above.

[2] *Rep't Bd. St. Char.*, 1895, p. 29.

A considerable degree of centralization is secured in the requirement that the superintendent of any county asylum shall "carefully observe the rules and regulations prescribed by the county commissioners and be guided by the suggestions which may be made to him by the Board of State Charities and by the Board of County Charities and Corrections" in any county where the same shall exist. It is his duty also to make such reports to the Board of County Commissioners and to the Board of State Charities as may be required[1]. Additional weight is here given to the suggestions of the Board by making them mandatory.

(e) Boards of County Charities and Corrections. The Board of State Charities was not so short-sighted as to presume that the annual or semi-annual visits made by its secretary or some of its members to the county institutions, were sufficient to conserve the best interests of the people or the welfare of the inmates. They perceived the advantage to be derived from enlisting local pride and interest in these efforts for the improvement of the dependent and delinquent classes. Indeed, in some counties such an interest had already led to beneficial results from the visits of voluntary bodies of humane and public spirited citizens[2]. But there was need of such inspection made regularly by some official and impartial body of competent persons. The Board of State Charities recommended the establishment of a local board of visitors in each county. "No institution," it said, "left solely to itself and its own officers will escape getting into a rut. The fresh eye and mind of the outsider will always see something to which custom has dulled the eyes of those who see it every day[3]."

An act was passed in 1899 creating such local boards. By authority of this law the Judge of the Circuit Court may,

[1] *Laws*, 1899, pp. 103–5.

[2] *Rep't Bd. St. Char.*, 1891, p. 46.

[3] *Ibid.*, 1893, p. 17.

and upon the petition of fifteen reputable citizens must, appoint a bi-partisan Board of County Charities and Corrections composed of six persons, of whom at least two must be women. The members serve without compensation. The board is required to meet quarterly or more often if necessary. It has full power to visit and carefully and thoroughly inspect, by the whole board or by its committee, all charitable and correctional institutions of the county that may receive any support from the public fund. It is their duty to ascertain whether the rules laid down by the board of county commissioners for the control of each institution and the suggestions offered by the Board of State Charities are being complied with. They may make suggestions to the persons in charge of the institution as to improved administration, and may report to the board of county commissioners or other officials having jurisdiction, any facts which ought in their judgment to be known by these officials. In case the board finds a state of things in any institution which is injurious to the inmates of it or to the county, or which is contrary to good order and public policy, it is their duty to address a memorial to the board of county commissioners or other officials having jurisdiction, in which they shall set forth the facts observed and suggest the remedies that seem to them necessary. This board of county charities and corrections makes quarterly reports to the board of county commissioners, showing the condition of the institutions visited during the year, and an annual report to the Judge of the Circuit Court; it sends copies of all reports and memorials to the Board of State Charities. It has authority to call upon the Secretary of the Board of State Charities for advice and assistance[1].

By October 31, 1901, such boards had been appointed in

[1] *Laws*, 1899, pp. 50–1; 1900, p. 412.

50 of the 92 counties.[1] "Some have rendered very efficient service. Their reports have led to an improvement in the condition of the inmates, repairs to buildings, and more satisfactory management. It is almost impossible to have these representatives of the people visiting the public institutions quarter after quarter and making known to the officials and the public through the local press the facts they find and the needs existing, without better conditions resulting."[2]

(f) Outdoor Relief. Probably the most appreciable influence which the Board of State Charities has exerted in respect to local charity, is to be found in connection with the "out-door" relief or the aid which is administered by the township trustees to the poor not kept in the county asylums and orphanages.

Prior to 1896 there was no means of obtaining information as to the number of persons relieved, the number of times individuals applied for aid or the reasons for asking assistance. It was known, through the reports of the Bureau of Statistics, that the amount expended was very large.[3] But whether it was expended corruptly and wastefully, or honestly and wisely, no man could know.

In order that it might have some basis for rational action in the future, the Legislature in 1895, in response to the recommendation of the Board of State Charities, enacted a

[1] *Rep't Bd. St. Char.*, 1901, p. 24.

[2] *Ibid.*, 1899. p. 24.

[3] Amounts expended by township trustees for poor relief (including medical assistance):

Year.	Total.	Amount per cap. of total population.
1891	$560,365 95	.256
1893	511,503 35	.232
1894	586,232 27	.268
1895	630,168 79	.289
1900	209,956 22	.083

Rep't's Bureau of Statistics, 1891, p. 141; 1893, p. 87; 1894, pp. 92, 96; 1895, pp. 52, 55.

law requiring township overseers and other persons administering relief from public funds to persons who are not inmates of any public institution, to keep a record, giving among other facts the name, age, sex, and nationality of every person receiving aid, the amount of aid furnished and the date. Two copies of this record are to be filed in the office of the auditor of the county. It is unlawful for the county commissioners to allow payment of the expense of the relief until this is done. The auditor transmits quarterly one of the duplicate copies to the Board of State Charities[1]. There was some neglect and carelessness in making the reports the first two years. But the Board was insistent; and since 1898 prompt reports have been had from every township trustee. The number of persons receiving aid was startling. The need of radical legislation was convincing.

The next step in the direction of reform was to transfer the burden of the outdoor relief furnished by trustees from the county to the township[2]. This makes the trustee more cautious in the granting of relief, since his constituents hold him responsible for the expenditure of their taxes.

Two years later a law still more complete in its details was enacted. It requires the trustee carefully to investigate the circumstances of poor persons applying for aid—their legal residence, the condition of their health, present and previous occupation, ability and capacity of themselves and other members of the family for labor, the cause of their distress, and whether such persons have relatives able and willing to aid them. He must refuse regular aid to able-bodied persons, unless they attempt to find work for themselves; but he must help them in their search for work. The overseer can not give aid a second time until he has asked the relatives of the applicant (if he has any) to furnish assistance to him. When the amount of aid given to

[1] *Laws*, 1895, pp. 241–2.

[2] *Ibid.*, 1897, p. 230.

any poor person or family equals $15, [or when, being less than $15, it extends over a period of three months,] the trustee cannot legally grant further aid without the approval of the county commissioners. A duplicate copy of the statement of every such case submitted to the county board, must be filed with the county auditor, who transmits it to the Board of State Charities. Permanent charges must be removed to the county asylum. The restrictions surrounding the granting of aid to transients reduce the assistance given to tramps to almost nothing. "All allowances for charitable purposes made from the public funds by any officers either of the county or of the township, shall be reported quarterly by the county auditor to the Board of State Charities[1]."

The law was denounced as impracticable. It was believed that its operation would cause the county asylums to be filled. These predictions have not been realized. The following statistics will show the effects of the laws which have been passed within the last six years. The year 1895 was the last before reports were required; the year 1898 was the last full year under the laws of 1895 and 1897.

	1895.	1898.	1900.	1901.
No. of persons receiving aid from township trustees...	.....	75,119	46,369	52,801
No. of times aid was given.	.....	173,088	74,546	79,421
Total amount of aid given..	$630,168.79	$375,206.92	$209,956.22	$236,724.00
Poor Asylum population...	.....	3,102	3,096	3,091

The figures for 1895, 1900 and 1901 include both outdoor and medical relief; those for 1898 do not include medical relief. The figures for 1900 and 1901 embrace, also, about $20,000 expended by trustees under the compulsory education law to enable indigent children to attend school. Comparing the years 1895 and 1900, a reduction of more than

[1] *Laws*, 1897, pp. 121–123. The part in brackets was omitted in the law of 1901.

$420,000 or 66 per cent. is observed. Comparing the years 1898 and 1900, it is noticed that the number of persons aided has been decreased by 28,750, and the amount of aid given, by $165,250.70. The increase in the number of persons aided and the amount of aid given in 1901 as compared with 1900, is due in part to the fact that "during that year the poor relief was administered by an entirely new set of trustees, who came to the office without experience or familiarity with the law[1]."

After making due allowance for the period of prosperity, there is no doubt but that this decline is due chiefly to the legislation and supervision of the past six years. In twenty-six townships no relief whatever was given in 1899. Paupers who had in many cases been receiving permanent aid, were dropped; and they found some means of keeping out of the poor-house and the suffering has not increased. The number of persons in the poor asylums has decreased not only relatively but absolutely[2].

(VII) *The Board of State Charities and the State Institutions.* The influence of the Board in the State institutions has been quite as marked and beneficial. Almost at once it attained in a high degree the confidence of the public as well as that of the managers of the State institutions. Some of the scandals prior to 1889 were humiliating indeed. But often honest officers had to remain under the odium of malicious and unfounded charges, until the General Assembly at its subsequent meeting could make an official examination. In the meantime the reports might have grown into a wide-spread scandal. So the honest and capable managers quickly realized, that an impartial official board

[1] *Ind. Bulletin of Char. and Cor.*, March, 1902, p. 12.

[2] In 1891 there were 14.8 persons in each 10,000 of the population who were cared for in poor asylums; in 1901, only 12.2 persons in each 10,000 were so reported. *Rep't Bd. St. Char.*, 1901, p. 80.

with legal powers of investigation was a strength to them and a defence against false rumors and calumnies. On the other hand, if there was truth in the charges, the evils might be quickly redressed without the unnecessary noise and publicity which tend to break down popular confidence in public institutions. The Board has been aptly characterized as a "representative of the public in the institutions" and a "representative of the institutions before the public."[1]

In most cases of complaint to the Board the matters requiring attention have been brought to the notice of the superintendent of the institution concerned, and no further action has been needed.[2] Better administrative methods were secured in some institutions without legislative action, through the suggestion of the Board. One instance of this was the general adoption of the plan of purchasing supplies by public contract. This reform destroyed at once a prolific source of malicious attacks.[3]

(a) Non-partisan Administration. In its first report the Board of State Charities made an appeal for the non-partisan management of the State Institutions. The first step in this direction was to take the appointing power from the legislative department and place it in the hands of the Chief Executive. This was done in 1893. The Governor was empowered "to appoint all the officers for all Benevolent, Educational, Penal, Reformatory and other Institutions of the State, and all other officers of the State whose election or appointment is now vested in the General Assembly by law."[4] He was given authority to remove any of these officers for incompetency, malfeasance in office, or for any other just cause, furnishing to the person accused a statement of

[1] *Rep't Bd. St. Char.*, 1893, p. 29.

[2] *Ibid.*, 1891, p. 23 [3] *Ibid.*, 1891, p. 22.

[4] Except the State Librarian and State House Engineer.

the cause of removal.[1] This law placed the responsibility where it belonged, but did not guarantee the elimination of party motive in making the appointments. The influence for good was immediately felt. In October of that same year the Board of State Charities was gratified to say: "Never in the history of State charitable institutions has their management been freer from the corrupting influences of partisan politics than to-day, and never has merit been so nearly the only test of fitness for employment in these institutions."[2]

At the next session of the General Assembly two other laws regulating the appointment of boards of managers of State institutions were enacted. The first[3] of these, which was passed over the Governor's veto, was retrogressive. It deprived the Governor of the power of appointing the boards of directors for the prisons for men, and gave that authority to an "appointing board" composed of the Governor, Auditor, Treasurer, Secretary of State and Attorney-General, a majority of whom differed from the Governor, but concurred with the Legislature, in their political opinions. The sole power to remove any member of these boards lay with this appointing power.

The other law was so diverse in its tenor that it seems strange that it was fathered by the same Legislature. By it the management of the four hospitals for the insane and the two institutions for the education of the blind and the deaf and dumb was vested in boards of control for the respective institutions, each consisting of three members "of known fitness, probity and high character." These eighteen trustees were to be appointed by the Governor, not more than nine of them to belong to the same political party. The

[1] *Laws*, 1893, pp. 137–8.

[2] *Rep't Bd. St. Char.*, 1893, p. 15.

[3] *Laws*, 1895, pp. 160–3.

Governor was to designate the institution for which each person was appointed, but not more than two persons on each board could be members of the same political party.[1] This was an advance step towards placing their control upon a non-partisan basis. The law was almost universally approved. Two years later a concession was again made to the politicians, by a modification of the law providing that not more than twelve of these eighteen trustees should belong to the same political party.[2] This change made it possible for the party in power to have a majority of the trustees on each of the six boards of control. Governor Mount, a consistent and devoted friend of reform, refused to take any advantage which might be derived from this law and, as far as possible, re-appointed the trustees whose terms expired during his administration.

In 1897 the power to appoint the members of the boards of control of the State Prisons was restored to the Governor.[3] But the laws did not compel the appointment of bi-partisan boards. At the next session the board of managers of the Reformatory was by law required to be bi-partisan.[4] Thus, the only institution left under political control is the State Prison. In fact, if not in law, its present management rests upon the sound principle, that one's political belief should not be considered in the appointment to, or retention in, office.[5]

Prior to 1897 the Legislature attempted to ascertain the needs of the State institutions by means of "junketing" committees. These "excursions" necessitated the absence of members, often interfered with legislative business and furnished little or no reliable information. By an act of 1897, amended in 1901, the Governor is empowered to ap-

[1] *Laws*, 1895, pp. 300–1.
[2] *Ibid.*, 1897, p. 158.
[3] *Laws*, 1897, pp. 69–70, 241–2.
[4] *Ibid.*, 1899, p. 410.
[5] *Rep't Bd. St. Char.*, 1899, pp. 5, 6.

point, ten days after each general November election, a bipartisan committee composed of three members-elect of the General Assembly (one Senator and two Representatives). It is the duty of this committee to visit the penal, benevolent and educational institutions; to investigate their needs and necessities, and to make a report to the Legislature, stating the amount of appropriation which they deem absolutely necessary to meet the wants of each institution.[1] The operation of the law has been very satisfactory. The recommendations of the committee have been generally accepted. They have not only saved the State unnecessary expenditures but have also protected the institutions from a niggardly economy.

A law of 1899 regulating the reports of officers, gives the Auditor of State a more thorough knowledge of the various items of expenditure of all institutions for which money is appropriated from the treasury of the State.[2]

The results following from the displacement of the spoils system have been an increased efficiency in management, a more extended service to the State at a greatly reduced cost, a higher standard in public life and an absence of scandals and corruption. Comparing the year 1891—the first in which satisfactory reports were obtained by the Board of State Charities—with the year 1899, the reduction in cost to the State since the non-partisan management was introduced becomes striking. The per capita cost of gross maintenance of the charitable institutions in 1891 was $229.79; for 1899 it was $167.37, a reduction of $62.42 per capita. If this difference is multiplied by the daily average number of inmates, the result will show that the cost in 1899 would have been at the former rate under the old system, $328,470 greater than it was.[3] While average prices fell from 100.6

[1] *Laws*, 1897, pp. 16, 17; 1901, pp. 75–6. *Rep't Bd. St. Char.*, 1900, pp. 7, 8.

[2] *Laws*, 1899, p. 407.

in 1891 to 86.5 in 1899—about 14 per cent.,[1] the reduction in the cost per capita was more than 27 per cent. It is, therefore, evident that this decrease in the expenditures of State institutions cannot be explained by alleging a corresponding fall of prices. Now, this saving to the tax payers has been effected without depriving any person of the aid which he would have had with the greater expense. In fact, the number of inmates of these institutions was greater in 1900 than in 1891. Not only has the number of unfortunates cared for increased, but in the treatment of these there has been great improvement. Those most competent to speak do not hesitate to say: "Never before were the inmates of our institutions so well cared for at so little cost as now."[2]

(*b*) *The Hospitals for the Insane.* While progress has been made in the care of the insane, there remains much to be done. The great need is for sufficient accommodations for the incurable insane. The number of insane confined in jails and county asylums or detained at home is between 600 and 700, or about 15 or 16 per cent. of the total insane population. A large number of these are incurable.[3] In urging the necessity for the care of this class the Board concludes: "If the history of the matter could be written in full, if particulars could be given of the numerous sorrowful and distressing cases, the struggle and disappointments, the unhappiness caused by the return of chronic insane to their families, or to the county poor asylum; the expense to the

[1] *Bulletin Department of Labor*, No. 27 (March, 1900), p. 275.

[2] *Rep't Bd. St. Char.*, 1900, p. 8. Compare also the complimentary references to Indiana institutions, quoted by Governor Mount in *The Indiana Bulletin of Charities and Corrections for June, 1901*, pp. 16, 17.

[3] *Rep't Bd. St. Char.*, 1900, pp. 61–3. A bill for an act to establish an asylum for this class passed the Senate in 1899, but failed to become a law because the Senate refused to concur in the House amendments. *Sen. Journ.*, 1899, pp. 586, 1003; *House Journ.*, 1162.

counties which have tried to make proper provision for them, the sufferings of the insane when county commissioners have been penurious, or superintendents of poor asylums inhuman or careless, if all this could be written the case would be far stronger."[1] Other recommendations of the Board of State Charities are: the founding of a village under the control of the State for all epileptics; and the establishment of colonies for able-bodied, harmless, chronic insane, apart from, yet under the supervision of, the hospitals for the insane.[2]

(*c*) *Penal and Reformatory Institutions.* There is no better illustration of the respect which is entertained for the opinions and recommendations of a body of experts than that found in the legislative and administrative history of the penal institutions of Indiana during the past decade.

(1) *Recommendations of the Board of State Charities.* In the first report of the Board the following recommendations were made:

(i) The establishment of an intermediate prison or a reformatory for men;

(ii, iii) The introduction of the indeterminate sentence and the parole system;

(iv) The adoption of the Bertillon system of registration;

(v) The beginning of legislation leading up to an habitual criminals' law;

(vi) The increase of the salaries of prison wardens and the absolute prohibition of perquisites;

(vii) The transference of the insane convicts to one of the hospitals for the insane;

(viii) The application of the surplus earnings of prisons to the benefit of the prisoners;

(ix) Better provision for the education of criminals;

(x) The abolition of degrading forms of punishment;

[1] *Rep't Bd. St. Char.*, 1892, p. 32. [2] *Ibid.*, 1899, p. 9.

(xi) Non-partisanship in the management of penal and reformatory institutions;

(xii) The authorization of the appointment of a State visitor to have access to all inmates of the penal and reformatory institutions to give them personal counsel and encouragement, and to visit those on parole.[1]

In subsequent years these recommendations were repeated and others were added:

(xiii) The complete separation of the Indiana Reform School for Girls from the Women's Prison;[2]

(xiv) A modification of the law regulating the discharge of prisoners;[3]

(xv) The enactment of a probation law providing for the suspension of sentence in certain cases;[4]

(xvi) The discontinuance of the practice of receiving Federal prisoners in the State prison;[4]

(xvii) The extension of the indeterminate sentence and parole law to convicts in the State prison, sentenced before the passage of the law or for a definite period;[5]

(xviii) The further restriction of the right of the public to visit State institutions.[5]

It is instructive to note how many of these proposals have been incorporated into law and how beneficial such laws have been in their operation.

(2) *Reforms Accomplished.* At the session immediately following the first report of the Board, numerous bills embodying their suggestions were introduced, but only two were enacted into law. These increased the salaries of wardens and forbade the retention of perquisites.[6]

Two years later a law was passed which prescribes conditions under which corporal punishment may be inflicted

[1] *Rep't Bd. St. Char.*, 1890, pp. 28–9, 30–35. [2] *Ibid.*, 1894, p. 69.
[3] *Ibid.*, 1895, p. 13. [4] *Ibid.*, 1896, pp. 12–13. [5] *Ibid.*, 1898, pp. 17, 18.
[6] *Laws*, 1891, pp. 53, 353.

upon convicts. To make the law effective in its operations, it is required that a discipline record be kept in which all punishments are to be entered. It is made the duty of the Secretary of the Board of State Charities at least quarterly to read and sign this record. Since then the managing boards of the Reformatory and the State Prison have voluntarily introduced the use of different uniforms for the different grades. The class to which a prisoner may be assigned, is determined by his own conduct in the prison.

A law authorizing the transfer of insane convicts from the State prison to the insane asylum was passed in 1895.[2] However, this was not carried out for lack of room. In 1899 the establishment of a hospital for the criminal insane was authorized. It was to be located at Jeffersonville under the control of the managers of the Indiana Reformatory. All insane convicts in the Indiana Reformatory and the Indiana State Prison, and any insane criminals in any jail or workhouse, were to be transferred and confined therein.[3] Because of a question as to the validity of the law, no steps were taken to put its provisions into operation.[4]

On account of the reforms introduced in 1897, that year will always be a notable one in the history of penology in Indiana. The imprisonment in the State prison or Reformatory of persons sentenced by the Federal Courts was prohibited.[5] This removed an element of confusion and left more room for convicts sentenced under State laws.

The act regulating the discharge of prisoners was amended so as to give ex-convicts a better chance of beginning a new life apart from their former associates and temptations.[6]

[1] *Laws*, 1893, pp. 269–271.

[2] *Ibid.*, 1899, pp. 505–8.

[3] *Ibid.*, 1895, p. 176.

[4] *Rep't Bd. St. Char.*, 1899, p. 6.

[5] *Laws*, 1897. pp. 218–219.

[6] *Ibid.*, 1897, pp. 114–115.

Still another law[1] abolished contract prison labor and substituted the "public account" system,[2] according to which the prisoners are employed in the production of articles needed in the State charitable and correctional institutions. The law requires the use of hand labor as far as practicable. There have been some difficulties in the way of the smooth operation of the law. The State Prison and the Reformatory are now making their own clothing; the convicts at the State Prison manufacture their own shoes, stockings and tobacco, and will soon undertake the production of certain kinds of textile goods on hand looms.[3] The provision requiring hand labor as far as practicable seems hardly in harmony with the rest of the legislation of this period. The fundamental idea is that the prisoner should be reformed and prepared as far as possible for an honest and a useful life in society. But society as now organized has few places for the hand-worker as distinguished from the artisan or the mechanic. What opportunity for an honest living is there in competitive conditions for the man who has spent a considerable period learning to make coarse cloth on a hand loom?

(3) *The Reformatory.* In 1897 the State Prison South was converted into the Indiana Reformatory[4] for the incarceration of male prisoners who may be convicted of any felony, except treason and murder in the first or second degrees, and who are between the ages of 16 and 30. Other convicts are to be confined in the State Prison at Michigan City. The Reformatory is under the control of a board of managers consisting of four persons appointed by the Gov-

[1] *Laws*, 1897, pp. 289, 290.

[2] The existence of prior contracts will prevent the complete operation of the law in the State Prison until 1904, and in the Reformatory until 1906.

[3] *Rep't Bd. St. Char.*, 1899, p. 9.

[4] *Laws*, 1897, pp. 69–77.

ernor. He has power to remove any member for misconduct or neglect of duty after an opportunity to be heard. Their compensation is $300 per annum and expenses. The board of managers appoints the general superintendent and has power to remove him. All other officers are appointed and selected by the general superintendent and are removable at his pleasure; appointments are made only after a rigid examination.

(4) *The Indeterminate Sentence and the Parole System.* The same law established the principle of the indeterminate sentence, which leaves the period of confinement indefinite, fixing only the minimum and the maximum terms. The board of managers may terminate the imprisonment when the requirements have been fulfilled. They also have authority after the expiration of the minimum term to release prisoners on parole. It is the duty of the managers to make provision for the literary and manual training of every inmate. They have very extensive authority in respect to making rules and regulations governing the reward, classification and punishment of convicts. With the consent of the Governor incorrigible prisoners may be transferred to the State Prison.

The principles of the parole and the indeterminate sentence were made applicable to prisoners sentenced thereafter to the State Prison, except in the case of persons convicted of treason or murder in the first or second degree.

Two years later the parole law was made applicable to persons in the State Prison who had been sentenced for a definite time prior to the enactment of the former law. In 1899 these principles were extended also to all women or girls over fifteen thereafter convicted of felony;[1] and in 1901 to those who were serving at that time a fixed term of imprisonment.[2]

[1] *Laws*, 1899, pp. 511–512.

[2] *Ibid.*, 1901, p. 320.

After a period of observation extending over four years the conclusion drawn, is that these laws have proved very satisfactory. At first they met with serious objection. It was alleged that the laws were unconstitutional, inexpedient and sentimental. Now, the support of them is well-nigh unanimous. The Board of State Charities shows that from April 1, 1897, to October 31, 1901, the total number of prisoners paroled from the State Prison and Reformatory was 1,430; of these 246 or 17 per cent. have proved unsatisfactory. The total amount of wages earned and board received by the paroled men is $211,707.[1]

From either a penological or an economical point of view these figures indicate most gratifying results. The fear that the penal system would lose its deterrent effect, because prisoners would be discharged after serving a short sentence, has also been shown to be groundless. The last 300 prisoners received at the Indiana Prison South, under the old system, not including life or Federal prisoners, served an average term of one year, ten months and twenty-four days per man. The first 300 under the new law, up to March 1, 1900, served an average time of two years and twelve days, and 130 still remained in confinement.[2]

It thus appears that most of the particulars contained in the program of reform have found a place in our statutes in whole or in part. The "Reform School for Girls and Women's Prison" has been separated into two distinct institutions, the "Indiana Industrial School for Girls," and the "Indiana Women's Prison." Both institutions still remain under the management of one board.[3] Non-partisan control exists by law in all institutions but the State Prison, and there by practice. The Bertillon system, a system of classification and a wage-earning system have been adopted with-

[1] *Rep't Bd. St. Char.*, 1901, p. 35.

[2] *Rep't Bd. St. Char.*, 1899, pp. 13, 14.

[3] *Laws*, 1899, p. 22.

out the need of legislative enactment. The visiting of public institutions has been restricted to narrow limits. This leaves, therefore, but a few objects originally designed, unattained; the habitual criminals' law, provision for a State visitor to prisoners, and the probation law. While the Board of State Charities does not assume all the credit for this commendable work, no one can deny that their expert knowledge, unselfishness, and persistence have been the paramount influences.

(VIII) *Administrative Functions.* In direct administration the Board of State Charities has not been granted very extensive powers. The administration of the compulsory education law is imposed in part upon it. The operations of this law have been discussed on preceding pages,[1] and need not be considered further in this place. The Board has considerable discretionary power in connection with the formulation of rules and regulations to assist in the execution of the act[2] governing the placing-out of dependent children. It appoints the State Agent and receives reports from him and the managers of orphan asylums.[3]

The Importation of Dependent Children. The Board of State Charities has the general supervision and management of the law regulating the importation of dependent children into this State and is given full authority to make rules and regulations necessary to carry it into effect; provided they are not inconsistent with the provisions of the law. The act makes it unlawful for any person, association or institution to bring or send into the State any dependent children for the purpose of placing them in homes in Indiana, without first obtaining the written consent of the Board of State Charities, and giving an indemnity bond in favor of the State in the penal sum of $10,000 conditioned as follows: that

[1] See pages 109–111 above.

[2] *Laws*, 1897, pp. 44–48.

[3] See pages 185–187 above.

they will not send into the State any child that is incorrigible or of unsound mind or body; that they will immediately report to the Board of State Charities the name and age of the child and the name and residence of the person with whom it is placed; that if such child, before it reaches the age of twenty-one, becomes a public burden they will remove it from the State; that if any such child be convicted of crime or misdemeanor and be imprisoned within three years from the time of its arrival they will remove it from the State upon its being released, and for failure to do this will forfeit to the State $1,000 as a penalty; that they will place such children under written contract; that they will properly supervise their care and training and will have a responsible agent visit them once in each year; and that they will report to the Board of State Charities as they may be required to do so from time to time.[1]

(IX) *The Educative Functions.* The secret of the great influence of the Board lies in the fact that they have not attempted to force legislation in the face of a popular dissent. They have appreciated that no effective reforms can be permanently secured unless they are supported by a hearty public approval. They recognized that their work was "peculiarly one of education and demonstration." In consequence they have patiently pursued a "waiting" policy, confidently relying upon the wisdom and prudence and practicability of their proposals finding a way to the popular conscience and will. The activity of the Board in educating popular opinion and stimulating official interest and pride in the institutions, is possibly the greatest benefit conferred by it. By means of the addresses, lectures and consultations of its Secretary and members, it has helped to arouse a popular interest in scientific methods of charity.

One of the greatest services of the Board has been that

[1] *Laws*, 1899, pp. 41–3.

of collecting, tabulating and publishing statistical information. Its reliable reports are of great value to students of sociology, officers of institutions and the general public.

Another valuable feature of their work is the system of registration which was begun during the first year of the Board's existence. Here in its office is a compilation of the histories, habits and movements of the dependent and defective elements of population. It now includes records of all paupers and dependent children in county poor asylums and orphans' homes, and of all the inmates of all the State institutions except the school for the blind and the soldiers' home. This information has been of great assistance to the legislators in the framing of laws. At the same time it has often enabled the Board to answer satisfactorily the anxious inquiries of persons concerning their friends or relatives who are inmates of the hospitals for the insane.[1]

In 1890 it inaugurated a series of annual conventions of township trustees and county commissioners. These meetings gave opportunity for consideration in a practical way of many questions relating to local charitable and correctional activities. The Board learned of the actual needs and difficulties of the system and thus avoided the danger of theoretical and ill-judged remedies. The local officials learned that the motives actuating the Board were those of sympathy and helpfulness. In such a way the keeping of uniform records, the use of uniform blanks for reports and the suppression of professional pauperism and the tramp nuisance were in part accomplished before they were made compulsory by law.

In the same year it organized and established the State Conference of Charities. In 1893 this organization was put upon an independent basis with the hearty co-operation of the Board. Meetings have been held annually in

[1] *Rep't Bd. St. Char.* 1899, p. 8.

different cities of the State, thus awakening the sympathetic interest of every part of the Commonwealth. The importance of this work in the estimation of the Board may be seen from the following: "These annual meetings of persons engaged in the care of State and county institutions are creating a more enlightened and progressive spirit in their management. No influence has exerted more distinctly beneficial results in the conduct of these institutions in so short a time."[1] "This Board feels that it has accomplished nothing of more importance to the welfare of the State than its establishment of this annual conference."[2]

In 1890 it began the publication of a Quarterly Bulletin for the purpose of placing before a large number of citizens information concerning the management of the State and county institutions which could not be obtained in any other manner.[3] In it are published the quarterly comparative exhibits of the State Charitable and Correctional Institutions. These exhibits show among other things the average cost per capita of maintenance and administration and the cost of articles of food and clothing in each institution. This publication of itself is a great check upon expenditures. If the costs of one institution are greater than those of another similarly situated, some explanation to the public and especially to the committees of the Legislature will be regarded as necessary. Officers manifest a commendable pride in conducting their institutions as economically as possible.

(X) *An Estimate of the Work of the Board of State Charities.* In consequence of twelve years experience under the supervision of the Board of State Charities and under the laws proposed by it, opposition to the Board has been transformed into sympathy with its purposes and cordial support

[1] *Rep't Bd. St. Char.*, 1893, pp. 24–5. [2] *Ibid.*, 1895, p. 40.

[3] *Ibid.*, 1896, p. 23.

of its recommendations. The people are proud of the progress of the State in its charitable and correctional activities, and unite with the press [1] and public officers in giving credit to the Board of State Charities for its usefulness. A few expressions of recent Governors may be cited as typical of public opinion on this question: "The closer my acquaintance with, and means of observation of, the work of the State Board of Charities, the more am I convinced of its value to the public, to the public institutions, and to the executive of the State." [2] "This Board is deserving of much credit. It has rendered efficient service to the State. The high standard of excellence attained in our charitable and penal institutions is due in no small degree to the wise suggestions of this Board." [3] "The work of the Board of State Charities is of inestimable value. Its supervision over the benevolent, charitable and correctional institutions is of special value and adds materially to the efficient, humane and economical management of these institutions." [4]

[1] See editorial in *The Indianapolis News* for August 30, 1900.

[2] *Message of Governor* Matthews, *House Journ.*, 1895, 51–2.

[3] *Message of Governor* Mount, 1899, *House Journ.*, 1899, 45.

[4] *Message of Governor* Durbin, p. 13.

CHAPTER IV

STATE MEDICINE

WITH the increase of population and the still more rapid concentration of large masses of people within small areas, the conservation of the public health has become a problem, the solution of which calls for the highest professional skill and the most efficient methods of administration. The activities of State health authorities are numerous and vary in importance with the changing conditions of time and place. The chief of these functions are the following: the prevention of the spread of contagious and infectious diseases among men and animals; the regulation of the practice of medicine, surgery, dentistry and pharmacy; the inspection of food and drugs; the supervision of public water supplies, the disposal of sewage and the construction of public buildings; the control over the preparation of the bodies of the dead for burial and their transportation from place to place; the regulation of offensive trades and other occupations; the collection and collation of vital statistics; and the supervision of local boards of health. These powers may be consolidated in the hands of a single officer or board, or they may be distributed among a number of co-ordinate officials or boards. In Indiana the latter method prevails. In presenting this topic, the matters falling within the jurisdiction of the State Board of Health will be discussed first as being the most important.

I. HYGIENE.

(I) *Period of Decentralization.* The first laws in the in-

terest of the public health were designed to secure the purity of food.[1] At the same time the financial interests of consumers and the producers of pure or sound goods were not lost sight of by the legislators. These laws were enforced by inspectors appointed by the bodies having charge of the county business. In 1818 the intentional sale of unwholesome provisions was made a crime punishable by a fine.[2] This law has been repeated in every revision of the statutes since that time. In 1852 the adulteration of liquors and the sale of adulterated liquors were also put in this category.[3] In 1881 the killing, for the purpose of sale, of diseased animals, the sale of the meat of any such animals or the selling of unwholesome milk, butter or cheese were also declared to be crimes against the public health. These laws were executed either by local officials having charge of market houses[4] or by the regular courts and officers. The protection which they afforded the public was quite inadequate, for no legal agency was provided whereby the impurity of foods and liquors could be ascertained.

Special territorial laws, incorporating the towns of Brookville[5] and Lexington,[6] gave the town trustees power to prevent and remove nuisances. The General Assembly of the State subsequently granted the same authority to town boards by the special acts and general laws regulating the incorporation of towns.[7] The provisions of these laws were very general. There was no mention of nuisances regarded

[1] As early as 1813, laws were passed providing for the inspection of beef, pork and flour. In 1816, tobacco was added to this list; in 1829, salt, and in 1834, lard, butter, spirits and linseed oil. *Territorial Laws*, 1813, pp. 58, 90; *Laws*, 1816–7, pp. 98, 100, 103; 1828–9, p. 72; 1833–4, pp. 151, 154.

[2] *Laws*, 1817–8, p. 87. [3] *Rev. Stat.*, 1852, ii, p. 435.

[4] *Rev. Stat.*, 1852, i, pp. 210–11; *Ibid.*, 1881, sec. 3106, clauses 11, 29.

[5] *Terr. Laws*, 1813, pp. 82 ff. [6] *Ibid.*, 1815, pp. 29 ff.

[7] *Laws*, 1816–7, Jan. 1, 1817, sec. 8; 1817–8, p. 376; *Rev. Stat.*, 1824, p. 415.

as especially obnoxious. It was left to the courts to determine whether or not the alleged nuisance was one in fact, and to order its abatement. Later laws defined nuisances more particularly.

In 1836 were passed the first laws authorizing the establishment of local boards of health and giving such bodies quarantine powers. The common council of Michigan City was required to appoint annually three commissioners as a board of health. The mayor was to be president and the recorder, clerk of the board. The council also had power in their discretion to appoint a "health physician," removable at their pleasure. It was his duty to visit and inspect, at the request of the president of the board, all boats and vessels landing at the wharves, which were suspected of having on board any pestilential or infectious disease; and all stores or buildings suspected of containing unsound provisions or other damaged and unwholesome articles; and to report at once to the clerk of the board. Thereupon, the board of health, if it deemed it advisable, had power to order any such boat to any distance from the wharves, not exceeding three miles, and to enforce the order in case of neglect or refusal to comply. Every practicing physician having "a patient laboring under any malignant or yellow fever, cholera or other infectious or pestilential disease" was required to report at once to the clerk of the board of health, under penalty of a fine. All persons, non-residents of the city, having any infectious or pestilential disease and all things infected or tainted with pestilential matter could by order of the board of health be removed to some place outside of the city; and the board could order any furniture or wearing apparel destroyed, whenever they might judge it necessary for the health of the city.[1] This law also made the earliest provision for collecting vital statistics. The

[1] *Spec. Laws*, 1835–6, pp. 14, 15, 22, 23.

common council had power to direct the returning and keeping of "bills of mortality" and to impose penalties upon physicians and sextons "for any default in the premises." In the same year, the president and trustees of New Albany were granted power to abate and prevent the creation of public nuisances; to do all things necessary to prevent the introduction of infectious diseases and to preserve the health of the town; and, if they deemed it proper, to appoint a board of health.[1] These laws were, no doubt, the result of the alarm produced by the appearance of cholera in the State in 1832 and 1833,[2] these two cities being particularly exposed to danger from that source. They were the models of subsequent special acts extending similar powers to other towns and cities.[3] The first general law for the incorporation of cities, passed in 1852, empowered common councils to establish boards of health and to invest them with all necessary powers, including the right to establish quarantine whenever such action was deemed necessary.[4] The complete absence of any central control over local boards of health makes it impossible to ascertain the number of such boards established under this law.

II *The Establishment of the State Board of Health.* In 1854 the physicians of Elkhart, Grant and Noble counties attempted to secure the enactment of a law requiring the registration of vital statistics; but they were unsuccessful. In the following year the first effort to secure a public health law was made by the Indiana State Medical Society, a voluntary association organized in 1849.[5]

[1] *Spec. Laws*, 1835–6, p. 80.

[2] Holloway, W. R., *Indianapolis*, pp. 44–5.

[3] *Spec. Laws*, 1836–7, p. 213; 1838–9, p. 110; 1839–40, pp. 24, 25, 39; 1845–6 p. 114; 1846–7, p. 15; 1847–8, p. 141.

[4] *Rev. Stat.*, 1852, i, p. 211.

[5] *Report State Board of Health*, 1898, p. 114.

For twenty years little encouragement was received by those interested in this project. Governor Hendricks was the first prominent State official to espouse their cause. At the request of a large number of the most eminent men of the medical profession of Indiana, he called the attention of the General Assembly in 1877 to the importance of providing by law for the establishment of a State Board of Health.[1]

The Indiana State Medical Society at its session in 1875 appointed a committee on the subject of a "State Board of Health." In 1878 it was resolved to add to this committee a competent civil engineer and the State Geologist as an *ex-officio* member, and to call this body the State Health Commission. The duties of this commission were to make investigations as to the causes of diseases and the means of preventing their spread, and to petition the Legislature to confer upon them police power in order to enforce what measures they deemed necessary to attain these objects.

During the year 1879 the State Commission formed district health commissions, each consisting of a chairman and a member from each county in the district. It was the duty of these local health commissions to collect sanitary and vital statistics in their localities and to report them to the secretary of the State Health Commission. The State Medical Society in May, 1880, directed each county medical society to require each of its members to keep a record of births and deaths, to note any epidemic or endemic diseases in their localities and such other vital and sanitary facts as they might deem proper, and to report to the local health commission. The secretary of the district commission was directed to report to the State Health Commission, which, in turn, was to report to the State Medical Society. Here

[1] *Message, Doc. Journ.*, 1877, p. 23. A bill to this effect was passed by the Senate, but failed to become a law because the Senate refused to concur in amendments made by the House. *Rep't St. Bd. Health*, 1898, p. 115.

was a voluntary organization which, according to the report of the State Health Commission, needed only two essentials to make it complete: police power conferred by the State upon the commissions; and means to defray the necessary expenses.[1] This report, containing a synopsis of a bill to establish a State Board of Health and local boards, was submitted by the Governor to the Legislature. That body in 1881 enacted a law which was in its general outline similar to the one proposed by the commission.

The Operation of the Law. The State Board of Health consisted of five members, of whom four were appointed by the Governor with the consent of the Senate and one, the Secretary, was elected by these four. The Board was granted "the general supervision of the interests of the health and life of the citizens of the State" with power to gather statistics and to make investigations respecting the causes of disease and especially of epidemics.

The trustees of each town, the mayor and common council of each city (except when a regular board of health had already been constituted by ordinance) and the board of county commissioners were declared boards of health, *ex officio*, for their respective municipalities to serve without compensation. Each local board was annually to complete its organization by the election of some physician as secretary, who was to be known as the "health officer." The town and city boards were subordinate to the county board; and the county board was required to "act in conjunction with the State Board of Health." The local boards were required to collect and to report to the State Board of Health such facts and statistics as were called for under the law or under the rules of the State Board.[2] The function of the

[1] *Report of Ind. State Health Commission for 1879*, found in *The Report of the Bureau of Statistics*, 1879, pp. 458–462.

[2] *Laws*, 1881, pp. 37 ff.

latter was chiefly advisory; that of the local boards, executive.

The law secured a greater degree of centralization than had prevailed before. In some respects, however, its operation was unsatisfactory. It was somewhat indefinite as to the duties and powers of the respective boards. The subordination of a city or town board of health to that of the county in which it was located was convenient in the making of statistical reports. But as a rule the health boards of cities were more active, more competent and more public spirited than the health boards of counties, which were their superiors in authority.

The vital statistics of the State Board of Health were almost valueless, because of the failures of local physicians to report births, deaths and other data. There was scarcely any improvement in their accuracy from 1881 to 1896. This was due in part to the defective provision of the statute which made the deliberative bodies of the municipalities, boards of health *ex-officio*.[1] As a consequence the boards were composed of persons who were not experts in the subject of hygiene and who underestimated its importance. Besides, the tenure of the health officer or the secretary of the board was for only one year. In the competition for the office, underbidding was resorted to, with the result that the successful applicant had often little ability and no professional interest in the work of the office.[2]

Several requests were made of the Legislature for an enlargement of the executive powers of the State Board and for a change in its composition. But almost no extension was made of its original powers until 1899 and 1901.

It must not, however, be inferred that these health laws, although imperfect, were worthless. On the contrary, they

[1] See page 218 above for provision and the exception.

[2] *Report of State Board of Health*, 1898, pp. 119, 120.

proved to be of great value. Perhaps the greatest service of the State Board of Health during this period was rendered in educating the people to appreciate the necessity of a careful observance of hygienic and sanitary laws. As the public grew more familiar with the operations of the various health organizations and the objects to be attained, the more popular the law became, and the more readily the rules and regulations of the State Board were observed.[1] The actual results of the work of the Board and its present functions will be more fully discussed in the following section.

III. *The Present Organization and Functions of the State Board of Health.* (*a*) *The Composition and Organization of the Board.* The State Board of Health is composed of five members. Four of these are designated by a board of appointment consisting of the Governor, Secretary of State and Auditor of State. These appointees elect for a term of four years a Secretary, who thereby becomes a member of the Board. They choose one of their own number President for a term of two years. All the members except the Secretary serve without compensation. The Board is required to meet quarterly in Indianapolis and at such other times and places as they may deem expedient.[2]

The Secretary of the Board must be a physician. He is declared to be the executive officer of the Board and the Health Officer of the State. He has charge of the records, books and property of the Board. He is the medium of communication with the local boards of health. It is his duty to prepare instructions and blank forms of returns and send them to the clerks of the local boards. He is required, through an annual report or otherwise, to disseminate among the people information derived from the statistical reports and knowledge respecting diseases and hygiene.[3]

[1] *Message of Governor* Gray, *Sen. Journ.*, 1887, p. 54.

[2] *Laws*, 1891, pp. 15, 16; 1899, pp. 17 ff.

[3] *Ibid.*, 1891, p. 16.

(*b*) *The General Powers of the Board.* The general powers of the Board are set forth in the following words: "The State Board of Health shall have the general supervision of the health and life of the citizens of the State. They shall study the vital statistics and endeavor to make intelligent and profitable use of the collected records of death and sickness among the people; they shall make sanitary investigations and inquiries respecting the causes of diseases and especially of epidemics; the causes of mortality and the effects of localities, employments, conditions, habits and circumstances, on the health of the people."[1]

The State Board is vested with a qualified legislative power under the following clause: "They shall adopt rules and by-laws subject to the provisions of this act and in harmony with other statutes in relation to the public health, to prevent outbreaks and the spread of contagious, infectious and other diseases, and shall promulgate such rules by sending a copy of the same to the Secretary of the County Board of Health, and the commissioners of said county shall cause such rules to be published."[2] As the constitutionality of this grant of power has been upheld by the Supreme Court,[3] these regulations have the force of statutes.

(*c*) *The Control over the Local Boards.* The local boards of health are still composed of *ex-officio* members who elect a secretary or health officer for a term of four years. The local health officer must now be a licensed physician, and if not informed at the time of his appointment in hygiene and sanitary science, he must so inform himself according to the requirements of the State Board. His compensation is fixed in proportion to the population of his town, city or county.[4]

[1] *Laws*, 1891, p. 17. [2] *Ibid.*, 1881, p. 37; 1899, p. 17.

[3] 10 *Indiana Reports, Appellate Court*, pp. 550 ff.

[4] *Laws*, 1899, p. 18. See also page 218 above.

It is the duty of the local boards to "protect the public health by the removal of causes of disease when known, and in all cases to take prompt action to arrest the spread of contagious and infectious diseases; to abate and remove nuisances dangerous to the public health, as directed or approved by the State Board of Health and perform such other duties as may from time to time be required of them by the State Board of Health pertaining to the health of the people." A much more prompt and effective administration is secured by conferring upon all local health officers "the statutory and common law powers of constables in all matters pertaining to the public health." Still more important is the provision that the State Board of Health shall have power to remove at any time after five days' notice and due hearing any health officer for intemperance or for failure to collect statistics, obey rules and by-laws, keep records, make report or answer letters of inquiry of the State Board concerning the health of the people.[1] A pointed warning is usually sufficient to secure prompt compliance with all duties and regulations.

(*d*) *The Prevention of the Spread of Contagious Diseases.* The most important duty of boards of health is the localization and extermination of contagious and infectious diseases. The State Board has authority to make rules and regulations for the management and control of these diseases.[2]

The first thing necessary to attain this end is to have prompt notification given to health officers of the existence of such diseases. By law it is made the duty of all physicians to report immediately to the secretary of the local board of health all cases of contagious diseases as are specified by the State Board.[3] By a rule of the Board, the same

[1] *Laws*, 1899, pp. 18, 19. [2] *Ibid.*, 1881, pp. 37-8; 1899, pp. 17, 19.

[3] *Ibid.*, 1899, p. 19. For the diseases which have been designated by the board as communicable and dangerous to the public health, see *State Ed. of Health Rep't*, 1898–9, p. 159, Rule 1.

duty is imposed upon any other person who knows of any such case.[1] The State Board has at its disposal a small fund to conduct bacteriological examinations for the diagnosis of diseases. Physicians are entitled to aid from this source in determining the character of difficult or doubtful cases. It is to be regretted that there is not more adequate provision for this work.

The next step is to secure the complete isolation of the persons who are suffering from the disease or who have been exposed to it. To effect this, the State Board has declared it unlawful for such persons to mingle with their fellow citizens on the streets or in public gatherings without having procured a permit from the county or local health officer. In certain cases quarantine may be established.

In case of death from any virulent contagious disease, the preparation and interment of the dead bodies must be in the manner prescribed by the rules of the Board. Finally, successful disinfection must be had. The method of accomplishing this is also minutely described.[2]

Furthermore, the State Board has prohibited the attendance at public schools of children affected with any communicable disease dangerous to the public health;[3] they have excluded from schools the use of slates; they have forbidden, if small pox is prevalent, the admission of any person, either as teacher or pupil, into any public or private school or institution of learning until after he has been successfully vaccinated.[4] They have given local boards of health supervision over the location, drainage, water-supply, heating, ventilation, plumbing and disposal of all excreta of all school-houses and public buildings within their jurisdic-

[1] *St. Bd. of Health Rep't*, 1898–9, p. 159, Rule 6.

[2] *Rep't St. Bd. of Health*, 1898–9, pp. 159–162. [3] *Ibid.*, p. 159.

[4] *Rep't St. Bd. Health*, 1884, p. 46. Blue *vs.* Beach, 155 *Ind. Rep'ts*, pp. 121 ff.

tion.[1] They have also imposed stringent rules upon all common carriers in the State in respect to the transportation of persons sick of, or suspected of being sick of, certain contagious diseases.[2]

In case of the disobedience of any of these rules, the health officers may invoke the aid of the courts. Persons failing or refusing to comply with these rules are deemed guilty of a misdemeanor and upon conviction are subject to a fine.[3]

There has been some opposition to the enforcement of these regulations; but, in general, it may be said that the people have recognized their expediency, even though expense and inconvenience may be caused by their enforcement.

(*e*) *The Supervision of Public Buildings.* Another function of the health authorities closely connected with the preceding one is the control over public buildings. Under the first law the Board had only advisory powers in this matter.

One of the first tasks undertaken by the Board was a sanitary survey of the school-houses. The surveys revealed a general unsanitary condition. The Secretary made many valuable suggestions as to the surroundings of school-houses, their ventilation and heating, the location of windows and blackboards, water-supply, water closets, vaccination and contagious diseases.[4] In the following year a similar examination was made of the county jails and poor asylums. An almost universal unsanitary condition was disclosed, and in many counties the buildings were pronounced "a disgrace to our Christian civilization."[5] The advice of the Secretary was

[1] *Rep't St. Bd. Health*, 1899, p. 159.
[2] *Ibid.*, pp. 164–5.
[3] *Ibid.*, p. 165; and *Laws*, 1899, p. 20.
[4] *Ibid.*, 1883, pp. 25–32; 1884, pp. 34–46.
[5] *Ibid.*, 1884, pp. 28–30.

courteously received, but not much improvement was made in the improper conditions.

In 1891 the law was so modified as to confer upon the State Board of Health power to control the sanitation of any public building or institution.[1] In order to carry this authority into execution, the State Board has given to the local health boards supervision over these matters. No school-house or other public building may be erected until the plans thereof have been submitted to, and have received the approval of, the local board of health having the proper jurisdiction over them. In the case of any public building already constructed, it is the duty of the local board of health, upon notification, to examine into the location, drainage, water-supply, heating, ventilation, plumbing and disposal of excreta of any such building. If the conditions are deemed detrimental to the public health, it is the duty of the local board of health immediately to notify the proper officer having charge of the building of the nature of the existing defect and of the method of correcting the evil. Thereupon, it is the duty of this officer to cause the changes recommended by the board to be made within ten days. It is unlawful to permit the evil to continue longer. An appeal may be taken to the State Board of Health; and pending the appeal the order of the local board must stand.[2] Should the local board refuse to act, the complainant may present the facts to the Secretary of the State Board, who may, after examination, direct the local board to take action. If the officials having charge of the condemned building refuse to obey the order of the State Board, resort must be had to the courts to compel compliance. The central officers have been very reluctant to invoke the aid of the courts, preferring to rely upon the justice of their demands and the good sense of the local officials.

[1] *Laws*, 1891, p. 17. [2] *Rep't St. Bd. Health*, 1898–9, pp. 159, 160.

(*f*) *The Supervision of Public Water Supplies and the Disposal of Sewage.* The board of health has passed an order that no sewer shall be constructed by any public officer or corporation until the plans shall have been submitted to, and approved by, the local board of health having jurisdiction.[1] Cities and towns frequently ask the advice of the State Board on this subject, and several hundred letters are annually written in response to such requests.[2]

The subject of pure water-supplies for towns and cities is very intimately connected with the question of the disposal of sewage. Several years ago the State Board of Health recommended a law to compel cities and towns to consult that body concerning the source and quality of their public water-supplies. It was believed that this would insure greater purity of water and better engineering. Even without this statutory authority, the Board has done good service in this field. About 1894 they began to make analyses of samples of water sent from various parts of the State. Several hundred have been examined, and about fifty per cent. of these have been condemned.[3] Much sickness has been prevented and death has been averted by the use of this expert knowledge.

In the central portion of the State the discharge of refuse from the increasing number of straw-board factories has caused such a pollution of the streams as to menace the public health. Popular protest led to the enactment of a law in 1901, designed to protect the interests of the people. But the law is so inadequate and its enforcement has been so obstructed by reason of a lack of laboratory facilities, that there is so far no amelioration of the offensive condition.[4] The law forbids the discharge into any stream of

[1] *Rep't St. Bd. Health*, 1898–9, p. 159.

[2] *Ibid.*, 1898–9, p. 7. [3] *Ibid.*, 1898, pp. 47, 121; 1899, p. 19.

[4] See *The Indianapolis News*, Sept. 20, 1901, p. 5, for a description of the bad state.

water, of refuse or waste-water from any manufacturing establishment of such a character as to pollute the stream, "except by, and in pursuance to, a written permission so to do, first obtained from the State Board of Health." In order to obtain such a permit, the owner of an establishment must file with the Secretary a written application, asking for the privilege, and showing that the volume of water in the stream is such that the refuse discharged in it would produce no harm to the public. If the Board finds, after an inspection of the stream, that the refuse may be safely discharged into it without injury, they may grant a permit for a limited period, revocable by the Board at any time.[1] The operation of the law has not allayed the opposition of the public to this dangerous practice of manufacturing companies.

As evidence of the growing importance of these subjects, it may be stated that in 1860 less than one per cent. of the population of Indiana was supplied with public water, and by 1896-7 the number had increased to 30.5 per cent. In the same year the percentage of population living in sewered towns was 18.[2] With the increase of population and the development of manufacturing industries, the question of sewage disposal and of pure water-supplies for cities will become more and more serious. It grows more evident every year that these matters can not be left to each individual community to settle as it pleases, irrespective of the larger interests of the whole State. Because they are not purely local questions, the safest and wisest policy seems to be to endow some central board with supervisory power over the whole matter.

(g) The Inspection of Food and Drugs. The early legisla-

[1] *Laws*, 1901, pp. 96–7.

[2] Abbott, S. W., *The Past and Present Condition of Public Hygiene and State Medicine*, pp. 39, 43.

tion in this connection and its insufficiency have already been considered.[1] A law of 1889 prohibited the sale of fresh meats, unless the live animals from which they were derived had been inspected by an officer in the county in which they were intended for consumption.[2] The law was directed against the meat-packers of other States, and could not be regarded as peculiarly in the interest of the public health. A law to prevent the adulteration of vinegar was passed in 1889;[3] but no provision was made for an official analysis or test.

The State Board acting under its general power to prevent the dissemination of disease promulgated rules for the care and management of dairies. They made several official investigations and condemned certain sources of the milk supply. They also analyzed samples of food submitted to them, but had no authority to prevent the sale of adulterated articles of food.

An act forbidding the manufacture or sale of any adulterated foods or drugs was passed in 1899. It defines with great minuteness the meaning of the terms; places the enforcement of the law in the hands of the State Board of Health; and makes the Secretary of that board the State inspector of foods and drugs, and every local health officer a food and drug inspector, subordinate to the State Board of Health. Any person selling, offering or exposing for sale any drug or article of food included within the provisions of this act is required to furnish a sample sufficient for analysis to any analyst or other agent appointed under this act, who applies to him for the purpose and tenders to him its value. There is a penalty for obstructing an officer in the performance of his duty and for the violation of the law. The articles condemned must be forfeited and destroyed.[4]

[1] See page 214 above.

[2] *Ibid.*, 1889, p. 123–4.

[3] *Laws*, 1889, p. 150.

[4] *Ibid*, 1899, pp. 189–191.

Under the powers granted by this act, the State Board of Health has prepared rules prescribing minimum standards for foods and drugs, defining specific adulteration and regulating the methods of collecting and examining drugs and articles of food.[1] However, the enforcement of the pure food law has been practically frustrated because of insufficient money and lack of laboratory facilities.[2] It is also the duty of the State Board of Health to co-operate in the enforcement of the act forbidding the sale of impure oils and to bring all violations of it to the attention of the grand juries.[3]

The administration of the act of 1901, providing for the sanitation of all food-producing establishments, the health of the operatives and the purity and wholesomeness of the food-products is placed in charge of the department of inspection; but any local health officer has power at any time to inspect such establishments.[4]

(*h*) *The Regulation of the Transportation of the Bodies of Deceased Persons.* Until recently the transportation of dead bodies was not carefully controlled. As a result, contagious diseases were often carelessly transmitted. The interstate transportation was especially difficult to regulate. In 1897, the conference of State Boards of Health, at Nashville, Tennessee, in conjunction with the National Baggage Agent's Association and the National Funeral Directors' Association, adopted a set of rules governing the transportation of dead bodies. These regulations were accepted by the State Board of Health and put into force March 5, 1899.[5]

(*i*) *The Collection of Vital Statistics.* The State Board of Health has supervision of the registration of births,

[1] *Rep't St. Bd. Health*, 1898–9, pp. 155–158.

[2] *Ibid.*, 1898–9, p. 10. See also *The Indianapolis News*, Sept. 6, 1901.

[3] *Laws*, 1901, pp. 33–4. [4] *Ibid.*, 1901, pp. 42–3.

[5] *Rep't St. Bd. Health*, 1898–9, pp. 56–8 and 262. See below, page 240.

deaths and marriages. They prepare the forms necessary for the thorough registration and report of vital and sanitary statistics. The clerk of the Circuit Court of each county is required to report monthly to the secretary of the county board of health the number of marriages and such facts relating to them as may be called for by the State Board.[1] All local boards of health are required to keep complete records, according to form prescribed, of all marriages, births and deaths.[2] It is the duty of the secretary of the board of health of each county to report such facts and statistics as may be required, under instructions from, and in accordance with blanks furnished by, the State Board. It is also the duty of the secretaries of the town and city boards of health to report to their respective boards such facts and statistics as might be called for by the State Board through the county boards. In order that the local boards may obtain authentic information, it is made the duty of all physicians and accoucheurs to report to the proper board of health all births and deaths which occur under their supervision with a certificate of the cause of death and such correlative facts as may be required in the blanks furnished by the Board.[3] Undertakers, sextons or other persons are forbidden to bury any dead body without a permit from the county, city or town board of health. This permit is issued only upon a certificate of death, according to the form prescribed by the State Board. In case of any burial without such a permit, the coroner of the county is required to disinter the body, hold an inquest and make a return within three days to the nearest local health officer.[4] These seem unusual powers to confer upon a central authority and can

[1] *Laws*, 1891, pp. 17, 19. [2] *Ibid.*, p. 19.

[3] Births or deaths occurring when no physician or accoucheur is in attendance must be reported by the householder.

[4] *Laws*, 1899, pp. 18–20.

be justified only on the ground that the ignorance and indifference of local communities must not be permitted, out of a misguided deference to local self-government, to endanger the life, property and happiness of the people of that larger community—the State.

V. *The Results of Central Control.* The State Board with its complete control and full understanding of the importance of accurate statistics has formulated a comprehensive plan for the collection of information, which must be used in every part of the State. The failure of health officers to obey and enforce the rules prescribed by the Board is followed by a prompt reprimand and warning; and if the offence is twice repeated, the careless or disobedient officer is discharged and very likely fined. The efficiency of this service has brought the accuracy of vital statistics almost to a state of perfection.

The close and intimate relation between the State Board and the local boards of health has had a wonderfully stimulating effect upon the latter. Prior to 1881 many of the secretaries of the local boards "simply drew their salaries and did as little work as possible." Now these officers are generally careful in keeping their records, prompt in making reports and enthusiastic in performing their duties. In 1890 the State Board inaugurated an Annual Conference of Health Officers which has proved of great service.

Numerous instances might be cited of improved sanitary conditions in towns and cities which have been due in a great part to the advisory or administrative authority of the State Board of Health.[1] It has prepared a health ordinance

[1] In the town of ———, prior to three years ago, the health was notoriously bad. A sanitary survey, made by the State Health officer, developed the fact that there was not a dry cellar in the town. Sanitary administration had not taken hold of the matter of the removal of garbage and the proper disposal of sewage. After due consideration, a sanitary engineer was hired to lay out the whole town in a complete system of sewers, which is being built as rapidly as possible. "An

which has been adopted in a number of towns, which prior to that time had no such ordinance.

In respect to zymotic diseases there certainly has been a decrease in the number of cases. This fact can not be established by statistics because of their incompleteness in the first years under the law. This improvement can be fairly ascribed to the influence of the State Board. Its circulars upon the prevention of communicable diseases and its prompt action in enforcing the law when such diseases are discovered, have materially reduced the number of deaths which would otherwise have occurred. "The State Board of Health has been active and alert in meeting threatened dangers, [from small-pox] and through its labors is constantly bringing to the public mind the importance of more perfect sanitation."[1]

The following comment is a fair reflection of the sentiment which the intelligent public entertains towards this Board:

"The State Board of Health offers a fine example of efficient service. It has brought the whole subject of public health from a stage of neglect and ignorance, in which disease riots, to the stage where much thorough work has been done, and where public attention and interest have been aroused."[2]

inspection of the town at this date will show that there is probably not a wet cellar in the town, and the old mud-holes and sinks which were found upon vacant lots, and even in the middle of the streets, have disappeared forever." In the city of ——— the influence of the State Board of Health was a potent force in securing the construction of a sewerage system and the establishment of a sanitary abattoir in place of the unsanitary slaughterhouses which formerly existed there. In still another city, municipal improvements in the way of sewers, paved streets and removal of dilapidated buildings unfit for habitation, were largely the result of recommendations made by the State Health Officer.

[1] *Message of Governor* Matthews, *House Journ.*, 1895, p. 51.

[2] Editorial in *The Indianapolis News*, Dec. 3, 1901.

2. MEDICAL EXAMINATION AND REGISTRATION.

The term "State Medicine" includes not only hygiene or preventive medicine but also medical education, registration of physicians and surgeons, medical expert testimony, pharmacy, dentistry and other subjects connected with the medical profession.[1] Under a broad construction of the term it may even be made to include veterinary medicine. It is being realized more and more clearly that the most effective system of hygiene can be maintained only by having competent and educated practitioners with a high standard of professional ethics. This necessitates, therefore, that the State should exact some test of the character and the qualifications of those who assume the responsibilities of the life and death of its citizens.

I. *Early System of Licensing Physicians.* At the very first session of the General Assembly it was deemed proper to subject the practice of medicine to some regulation. Each judicial circuit was declared by law to be a medical district. The act designated certain physicians in each district who were to constitute a board of "medical censors" with authority to examine and license practitioners. As soon as the censors and licensed physicians of any district were organized, they were to "be known in law and equity as a body corporate and politic," with power to sue and be sued, to make their own by-laws, not inconsistent with the laws and constitution of the State; to admit new physicians to practice; and to expel any of their members. A copy of the by-laws and rules was required to be submitted to the General Assembly for approval.[2] In 1818 the Legislature urged the different medical societies to send delegates to a general convention to take into consideration the medical law of the State and to recommend modifications of it to

[1] Compare Abbott, *op. cit.*, p. 6.

[2] *Laws*, 1816–7, pp. 161–165.

the following session of the General Assembly.[1] In the ensuing year there was established by law a State Medical Society composed of delegates from the district societies. It was granted power to settle differences between the district medical societies, and also to decide cases appealed to it by physicians from the decisions of their respective societies. A severe penalty was imposed upon any one who practiced medicine without a license.[2] This society was reorganized in 1825 and was granted power to prescribe the course and the period of medical study and the qualifications necessary for a license. The censors of the district societies were authorized to examine applicants and grant licenses. The applicant had the right of appeal from the censors to the district society; and from the district society to the State society, whose decision was final.[3]

Evidently the law was considered imperfect; for the preamble of an act regulating medical societies, passed in 1830, related that "owing to defects in the law regulating the practice of physic in this State, the medical societies which now exist, have never been legally organized, and the provisions of the act are such as do not induce a large portion of qualified men to become members of any medical society, or sufficiently to guard against licensing unqualified men to practice medicine."

To remedy these evils the law proceded to legalize the societies already in existence and all their previous acts, and confirmed all the powers and privileges enumerated in the act of 1825.[4] By the omission of this law from the Revised Statutes of 1843, the public was for forty years left without any legal protection against the imposition of ignoramuses and charlatans, except that afforded by the Common Law. Not until 1881 did the criminal code contain any penalty for

[1] *Spec. Laws*, 1817–18, p. 90.

[2] *Laws*, 1818–19, pp. 77–8.

[3] *Ibid.*, 1825, pp. 36–40.

[4] *Rev. Stat.*, 1831, pp. 372–3.

the improper acts of those who practiced medicine.[1] An attempt to secure a registration law was made about 1850, but it was unsuccessful.[2]

II. *Licenses granted by the County Clerks.*—In 1857 many numerously signed petitions from various parts of the State were presented to the General Assembly, asking protection for the community by legislation against the "ignorance and incompetency of apothecaries and practitioners of medicine and surgery." The select committee of the House which had the petitions under consideration showed their comprehension of the situation. They reported that, because of (1) "The vast importance of competency in medical men to the community;" (2) "The extensive range of knowledge requisite to make them competent;" (3) "The impossibility of the masses estimating correctly the qualifications of a candidate for practice;" and (4) "The fact that many incompetent men do practice these professions," it was "not merely expedient but obligatory under the Constitution to provide by legislation for the safety and well being of the people against the ignorance of pretended physicians, surgeons and apothecaries." They recommended a law requiring all persons engaging in the practice of medicine to first procure a certificate of qualification from a Board of Medical Examiners created by the act.[3] The failure of the bill to become a law was attributed to the bitter political controversy of that session.

Bills of the same tenor were subsequently introduced in

[1] The prescription of secret medicines and the prescription or administration of drugs or medicines by any one in a state of intoxication were declared to be crimes punishable by fine and imprisonment in the county jail. *Rev. Stat.*, 1881, sects. 1921–2.

[2] *Rep't St. Bd. Health*, 1883, p. 52.

[3] *Report of the Select Committee on the Practice of Medicine and Surgery. Doc. Journ.*, 39th Sess. (1857), ii, pp. 533–6.

the General Assembly but failed to pass.[1] The lack of zeal in the promotion of a higher professional standing was due, in part, to the rivalries of the various schools of medicine which had representatives in the State. Each was afraid that discriminations would be made against it, in the event that the board should be composed of the adherents of the other schools. The prevalence of such sentiments explains the faint-hearted character of the next legislation on this subject.

In 1885 it was declared unlawful for any one to practice medicine, surgery or obstetrics in Indiana without a license. This document was to be obtained from the clerk of the circuit court of the county wherein the applicant desired to practice medicine, upon the presentation of a diploma held by him from some reputable medical college, or upon filing the affidavit of two householders that he had resided and practiced medicine and surgery in Indiana for ten years continuously.[2] The question of the reputableness of the medical colleges was left to the several judgments of ninety-two local officers.

The weakness of the law was still further heightened in 1891 by providing that a license granted by a county clerk authorized one to practice in any county of the State.[3]

III. *The State Board of Medical Registration and Examination.* It was not until 1897 that an effective plan, acceptable to the leading schools, was devised and enacted into law. The Governor was authorized to appoint a State Board of Medical Registration and Examination, composed of five members. No school or system of medicine was to have a majority representation, and each of the four schools or sys-

[1] *House Journ.*, 1881, pp. 126, 160; *Sen. Journ.*, 1881, pp. 95, 696.

[2] Or had practiced for three years continuously and had taken one full course of lectures in some reputable medical college. *Laws, Spec. Sess.*, 1885, pp. 197, 199.

[3] *Laws*, 1891, p. 396.

tems having the largest numerical representation in the State was entitled to at least one representative on the Board. The Governor had power to remove any member for a good cause. The county clerks still had authority to issue the licenses which were valid in their respective counties; but their discretionary power was taken away. They could grant licenses only upon the presentation by the applicant of a certificate issued by the State Board of Medical Registration and Examination. Such a certificate could be obtained upon the submission of a diploma from a recognized medical college, upon the presentation of a license held by the applicant at the time of the passage of the law or upon examination by the board. They had power to establish the minimum requirements which were necessary to secure a certificate upon examination. What is more important, they could determine the minimum requirements and rules for the recognition of medical colleges. The applicant, if he should fail to pass an examination, had the right of appeal to the Circuit or Superior Court of the proper county requiring the Board to show cause why he should not be permitted to practice medicine. This limitation upon the power of the Board was believed to be in the interest of the personal rights of the individual. It was made the duty of the prosecuting attorney, upon the complaint of the Board, to prosecute any violation of the law. The Board could refuse to grant a license to any person guilty of felony or gross immorality or addicted to the liquor or drug habit to such a degree as to render him unfit to practice medicine or surgery; and it could, after notice and hearing before the Judge of the Circuit Court, revoke a license for like cause.[1] Two years later some minor changes were made.[2]

In 1901 the meaning of the "practice of medicine" was

[1] *Laws*, 1897, pp. 255–260. [2] *Ibid.*, pp. 247–253.

defined more precisely. An amendment was also made which provides that after January 1, 1905, "no certificate shall be issued to any person whomsoever until he shall have satisfied the said board that he has graduated at a reputable medical college" maintaining the standard prescribed by the Board, "and shall have passed before said board a satisfactory examination as to his qualifications to practice medicine, surgery and obstetrics."[1]

In some quarters there has been a disposition to uphold the "personal liberty" of the man who may wish to call in a doctor who has not and cannot meet the requirements prescribed by the law and the rules of the Board; but the latter has insisted upon its rights under the law. As results of this legislation, "a large number who were devoid of medical education have either quit the practice or left the State," and the standards of the medical colleges within the State have been raised.[2]

3. REGULATION OF THE PRACTICE OF DENTISTRY.

Legislation regulating the practice of dentistry has had the same general trend as that controlling the practice of medicine.[3] The present law[4] is modeled after the act of 1897 regulating the licensing of physicians. It provides for a State Board of Dental Examiners, consisting of five reputable dentists, appointed biennially, one by the Governor, one by the State Board of Health, and three by the Indiana State Dental Association (a private corporation). This Board has substantially the same control over the practitioners of dentistry that the State Board of Medical Registration and Examination exercises over physicians and surgeons.

[1] *Laws*, 1901, pp. 478, 481.

[2] *Report of the State Board of Medical Registration and Examination*, 1898–1899, pp. 5, 6.

[3] See *Laws, Spec. Sess.*, 1879, pp. 122–3; 1887, pp. 58–9.

[4] *Laws*, 1899, pp. 479–484.

4. THE REGULATION OF THE PRACTICE OF PHARMACY.

In the sale of drugs and medicines the public are exposed to similar risks and dangers, because of the ignorance or incompetency of the vendors of these articles. Consequently there has been felt the same need of legal protection.

For twenty years bills regulating the sale of these commodities were from time to time introduced in the General Assembly[1] only to be defeated. In 1899 a law was enacted designed "to protect the people by requiring all persons selling at retail or compounding for sale at retail any poison or compound containing a poison (with certain exceptions[2]) to be duly licensed." To carry out the provisions of the act, the Governor is authorized to appoint a Board of Pharmacy, consisting of five pharmacists of recognized experience and ability. The Governor has power to remove any member for cause. The Board has considerable discretion as to the adoption of such rules as it may deem necessary to secure the proper enforcement of the act. The Board issues licenses as registered pharmacists[3] upon the submission of evidence satisfactory to it of one of the following qualifications: The proprietorship or management of a store or pharmacy in which physicians' prescriptions are compounded; experience as a clerk in such a store for four years immediately preceding the application; or ability to pass a satisfactory examination and four years experience.[4] Lists of registered pharmacists and registered assistant pharmacists are filed with the Secretary of State.

[1] *House Journ.*, 1881, pp. 456, 1350–2; 1889, pp. 74, 738, 743; 1895, pp. 103, 480; 1897, pp. 971, 1357, 1547, 1607.

[2] General merchants are permitted to sell certain staple articles without a license.

[3] Provision is also made for the licensing of registered assistant pharmacists.

[4] *Laws*, 1899, pp. 159–163. In case an applicant is a graduate of a school of pharmacy having the standard and the requirements satisfactory to the Board, the time actually spent in attendance is accepted in lieu of an equivalent period in a store or pharmacy.

5. THE LICENSING OF EMBALMERS.

The proper care, embalming and transportation of the bodies of deceased persons and thorough disinfection are scarcely less important to the public health of the State than high professional skill in the treatment of disease. During the last decade several attempts were made to secure legislation providing for the better protection of life and health by the creation of a system of examination, registration and licensing of undertakers.[1]

In the absence of any statute regulating this profession, the State Board of Health in 1898 entered into a voluntary agreement with the Indiana State Funeral Directors' Association, for the purpose of carrying out the regulations governing the transportation of dead bodies.[2] The State Board of Health appointed from the members of the Funeral Directors' Association an examining board which prepared and adopted, with the approval of the State Board of Health, rules governing the examination of persons who desired to be recommended by the examining board to the State Board of Health. The State Board of Health granted certificates only to those persons so recommended, and issued annually a list of the registered embalmers who were duly qualified to prepare for transportation the bodies of those who had died of infectious or contagious diseases. The State Board of Health reserved the power to refuse or revoke a license on account of criminal acts, drunkenness, or failure to prepare a body for transportation exactly according to rules.[3]

In 1901 a separate board was created with authority in this field. Provision was made for a State Board of Embalmers, consisting of five members appointed by the Gov-

[1] *Sen. Journ.*, 1893, pp. 81, 513; 1895, p. 550; 1897, p. 194; and *House Journ.*, 1893, pp. 133, 898; 1897, pp. 319, 811; 1899, pp. 157, 427.

[2] See page 229, above.

[3] *Rep'ts St. Bd. of Health*, 1897–8, pp. 44–5; 1898–9, pp. 56–59, 134.

ernor. Four of these members must be practical and practicing embalmers and one a regularly registered practicing physician. This board has power after the examination of applicants upon the subjects of sanitation, disinfection and the care, disposition and preservation of deceased persons, to grant licenses to practice the profession of embalming for one year. A renewal may be had each year without further examination. A penalty is imposed upon persons who practice the profession of embalming without a license. The licenses issued to embalmers by the State Board of Health prior to the enactment of this law were legalized.[1]

6. THE PREVENTION AND SUPPRESSION OF THE DISEASES OF ANIMALS.

The character of the health conditions among animals has a vital importance to the public health of the community for two reasons: a large proportion of man's food is composed of animal products; and many infectious diseases among domestic animals are communicable to the human species. Hence, in the effort to safeguard property and human life, it has been found necessary to provide scientific methods of dealing with the diseases of the brute creation.

The early laws of Indiana on this subject were enacted solely in the interest of property rights.[2] Since no special officers were charged with the enforcement of these laws their execution was left to the regular courts and peace officers.

I. *The State Live Stock Sanitary Commission.* The Statutes organizing the State Board of Health did not directly place the control of diseases of animals under its jurisdiction. But the Board considered the influences of such dis-

[1] *Laws*, 1901, pp. 562–4.

[2] *Ibid.*, 1840–1, p. 146; 1867, pp. 136–7, 189; 1869 (*Reg. Sess.*), pp. 28–30.

eases upon the public health of so great consequence, that they adopted a rule requiring local health officers to take cognizance of all violations of statutes in reference to diseased animals,[1] and to cause a rigid enforcement of the laws. The Board urged the necessity of placing the diseases of domestic animals under its immediate supervision, and of providing for the appointment by the Governor of a State veterinary surgeon whose work should be under the auspices of the Board.[2]

The presence of pleuro-pneumonia among the cattle in some sections of Indiana and in adjoining States[3] led, in 1889, to extensive legislation upon this subject and the establishment of the State Live Stock Sanitary Commission.[4] This board consisted of three commissioners, who were practical agriculturists, identified with the live stock interests. They were appointed by the Governor upon nomination by the State Board of Agriculture. The commission in turn appointed an experienced veterinary surgeon for the State. In the execution of its duty to protect the health of domestic animals from all contagious or infectious diseases of a malignant character, the commission had authority to establish and enforce such quarantine, sanitary and other regulations as it deemed necessary.

The secretaries of the county boards of health were required to co-operate with the commission. Because of the divided authority of the commission, the operation of the law was not satisfactory.[5]

[1] See page 214, above.

[2] *Rep't St. Bd. Health*, 1884, pp. 67–8.

[3] *Messages of Governor* Gray, *Sen. Journ.*, 1887, p. 57; and *House Journ.*, 1889, p. 46.

[4] *Laws*, 1889, pp. 380–7.

[5] See *Message of Governor* Matthews, *House Journ.*, 1897, p. 36; also *Message of Governor* Mount, *House Journ.*, 1899, p. 32.

II. *The State Veterinarian.* A decided improvement was made in 1901 by abolishing the old commission and establishing the office of State Veterinarian.[1] This officer is appointed by the Governor and is subject to removal by him for cause. It is his duty "to protect the health of the domestic animals of the State; to determine the most efficient and practical means for the prevention, suppression, control and eradication of dangerous, contagious and infectious diseases; and to investigate the cause, nature, means of prevention and treatment of such diseases as he may deem advisable." For these purposes he is authorized and empowered "to establish, maintain, enforce and regulate such quarantine and other measures relating to the improvement and care of animals and their products, the disinfection of suspected localities and articles, and the destruction of such animals and property as he may deem necessary; and to adopt, from time to time, all such regulations as may be necessary and proper for the carrying out of the purposes of this act."

The rules and regulations published by the State Veterinarian are declared "to have the force and effect of laws of the State." He has power to appoint and employ such assistants or agents as he may think proper. It is made the duty of the owner of an animal affected with a dangerous or contagious disease, or of any other person knowing of, or suspecting the existence of such disease, to report promptly to the local health officer, who within twenty-four hours must report the same to the State Veterinarian. It is the duty of this officer or his agent to visit the locality, make the proper examination and enforce the necessary rules and regulations. In order to make the examinations, these officers have the right at all times to enter any premises or places where domestic animals, living or dead, may be. In case it may be

[1] *Laws*, 1901, pp. 98–102.

deemed expedient to kill any animal or destroy property to prevent the spread of disease, the State Veterinarian or his agent adjusts the claim with the owner; provided, the amount to be paid is less than $25. If the amount of the claim exceeds that sum, or if an agreement can not be made with the owner, the matter is referred to three appraisers appointed, one by the State Veterinarian or his agent, one by the claimant and a third by the two thus appointed. Their appraisement is to be paid by the State; but not more than $25 can be allowed for any infected animal, and the right to indemnity is wholly denied in certain cases. The State Veterinarian, under the power granted him, has adopted for the State the rules prepared and used by the Department of Agriculture of the United States. It is his duty to make examinations into the conditions of the live stock of the State in relation to contagious and infectious diseases, including the milk supplies of cities, towns and villages, and to take proper means to protect such milk supplies from contamination. Upon the request of the State Board of Health he is required, as far as possible, to investigate the conditions of dairies and such diseases of animals as are communicable to man. The decision of the State Veterinarian in all matters pertaining to diseases of domestic animals and his orders as to their disposition are final. He may call upon any peace officer for aid in the discharge of his duties, and such officer must give assistance.[1]

The law has been in operation so short a time that conclusions as to its workings can not fairly be drawn. Already an extended study has been made of certain diseases, and all proper calls for assistance have been attended without exceeding the allowance of $250 per month, made by law.

III. *The Regulation of Veterinary Medicine.* In 1901 for the first time the practice of veterinary medicine or surgery

[1] *Laws*, 1901, p. 102.

was regulated by law. It is made unlawful for any one to practice this profession who is not a graduate of a reputable veterinary college. An exception is made in favor of persons who have practiced for five consecutive years as a means of gaining a livelihood.[1] Any clerk of a circuit court, upon the filing with him of the necessary evidence of qualification, must issue to the applicant a certificate to practice the profession in any county of the State.[2] The State Board of Health furnishes the blank certificates, but has no other authority in regard to the matter. The county clerks are the sole judges of the evidence as to the qualifications. Further legislation along this line is already requested.

Much of the legislation in the field of State Medicine and Hygiene is too recent to justify any general conclusions as to its efficiency. Whatever may be its subsequent effects, it is evidence of a decided drift towards the centralization of administration. This tendency is the outgrowth of a conviction that these matters are of such importance to the public in general, that they cannot be left to individual action or local control without serious detriment to the life, health and property of the people as a whole.

[1] The law does not apply to certain operations nor to persons practicing upon their own animals.

[2] *Laws*, 1901, pp. 421–2.

CHAPTER VI

TAXATION

1. The Transition from a Centralized to a Decentralized Administration.

During the early territorial period there was close centralization in the administration of both local and territorial finances. Prior to 1792 there was no legislation in the Northwest Territory in respect to the raising and disbursement of revenue. The small expenses of the territorial government were paid out of the Federal Treasury;[1] and the insignificant costs of the local administrations were defrayed from the proceeds of fees, fines and forfeitures.

Three important laws from the standpoint of local taxation were passed in 1792. One of these was a police regulation as well as a revenue measure. The Governor was empowered to appoint in each county one or more commissioners with authority to grant licenses to any merchants, traders or inn-keepers, who were recommended by the court of the general quarter sessions. The receipts from such fees were turned into the treasuries of the respective counties.[2]

A second law directed the manner in which county taxes should be raised. It authorized the court of general quarter sessions of the peace to make an estimate of the amount of

[1] *U. S. Statutes at Large*, i, p. 286.

[2] Chase, i, *op. cit.*, p. 114. Three years later the Governor himself was directed to license the keepers of taverns and other drinking houses, upon the recommendation of the courts of general quarter sessions. *Ibid.*, p. 165.

money which they thought necessary to defray the expenses of the county for the ensuing year, specifying as nearly as possible the purposes for which the several sums would be needed.[1] This estimate was to be laid by the clerk before the Governor and Judges, who had authority to approve it, and to levy upon the inhabitants of the county the sum which they deemed requisite. The judges of the court of common pleas were to appoint annually in each town or district of the county from one to three commissioners, who constituted a board with power to assign to each district its proper share of the tax, having "special respect to wealth and numbers." In each subdivision of the county three judicious men were annually designated by the same court who assessed upon, and apportioned among, its inhabitants the amount imposed upon the district, "according to the best of their judgment in just proportion to the wealth in the county and ability to pay." Though somewhat clumsily stated, this was a recognition of the faculty theory of taxation. To prevent any partiality or injustice, it was provided that any one who thought himself unreasonably assessed had the right to petition the local courts or the General Court of the Territory for relief; and the decision of the court was final.

The third law[2] alluded to above empowered the Governor to appoint and commission during pleasure a "Treasurer-General of the Territory" and a treasurer in each county, who were charged with the duties usually pertaining to such offices. The Treasurer-General and the county treasurers as well were required annually to lay their accounts before the Legislature of the Territory, showing the moneys that had been received by them and how they had been disposed of. To force county treasurers to comply with this requirement it was made unlawful to levy any further assessment in any

[1] Chase, i, p. 118. [2] *Ibid.*, p. 117.

county which had not rendered a satisfactory settlement to the Legislature.

In 1795 a radical departure from this compactly centralized control was made; and a field for local self-government was opened. It was no longer necessary to submit the county estimate to the Governor and Judges for their approval and authorization. The chief officers charged with the duty of carrying into effect the "law for raising county rates and levies," were three commissioners[1] in each county, appointed by the court of general quarter sessions for the term of three years. Still more democratic in its nature, was the provision for the annual election of one assessor in each township by the free males thereof. The commissioners and the assessor had the power of auditing the county accounts and of making appropriations of money for the benefit of the county. Constables were required to certify to the assessors the names of all persons residing or sojourning within their respective townships with an account of all lands, houses and other property, including "bound servants." The assessor of each township, after having received the returns of the constables, was authorized to assess equally and impartially all ratable persons, having due regard to the yearly value of the property of each. Any person thinking himself aggrieved had the right of appeal to the commissioners who might increase or diminish the assessment. The power of appointing county treasurers still rested in the hands of the Governor; but they were responsible to the local authorities instead of the central government. The control exercised by the commissioners and assessors over the local financial officers was quite extensive. They appointed a collector for each township, who was required to render an account and pay over all moneys

[1] Chase, i, p. 168–174. These officers did not perform the administrative duties now imposed upon county commissioners.

and orders promptly to the county treasurer. The latter was obliged to certify to the commissioners from time to time the amounts collected, to report any delinquency on the part of the collectors, and annually to bring his accounts into the court of the general quarter sessions and settle with the commissioners and assessors. The commissioners were empowered to fine unfaithful and delinquent collectors, who were answerable with their bodies and estates. They also had power to fine treasurers and assessors for refusing or neglecting to do their duty. The county commissioners themselves for failure to do their duty, were, in turn, subject to fines imposed by the court of the general q uarter sessions; and for misbehavior they were liable to removal from office. Finally, the commissioners, assessors and treasurers, all, were required, annually to lay before the court of general quarter sessions and the grand jury of the county their books and accounts. No report to any territorial officer was required. However, the justices of the courts were themselves the appointees of the Governor of the Territory. There was, besides, an important central judicial control provided for in the law[1] establishing the higher courts. This act authorized the General Court or Supreme Court "to examine, correct, and punish the contempts, omissions and neglects, favors, corruptions and defaults of all or any of the justices of the peace, sheriffs, coroners, clerks, and other officers, within the respective counties." The first Territorial assembly in 1799 enacted a law[2] regulating county levies which was modeled after the act of 1795. It made no change in the method of supervision of local financial officers.

The first tax for territorial purposes was not levied until 1798,[3] ten years after the organization of the Northwest

[1] Chase, i, *op. cit.*, pp. 147–150. [2] *Ibid.*, pp. 272–9.

[3] *Laws of Northwest Territory*, 1798, pp. 23–26; Chase, i, p. 208–9. The law was taken from the Kentucky code.

Territory. It subjected all unsettled and unimproved lands[1] to taxation. As this law was not adopted from one of the thirteen original States, it was unauthorized and was repealed in the following year. The passage in 1798 from the first grade of territorial government to the second, was attended by increased expenditures. This necessitated the enactment in 1799 of several laws in regard to taxation.[2] One of these imposed a tax on land.[3] It authorized the courts of general quarter sessions to appoint one or more commissioners or listers for each county. It was their duty to make a list of the land owned in their districts, and to classify it according to quality and situation into three grades, each of which was taxed a certain number of cents per hundred acres. The right of appeal from the assessments to the court of general quarter sessions was granted. The form of the schedule for listers was prescribed, but no way was provided by which the territorial officers could exercise supervision over the local officials except through the courts.

When the Territory of Indiana was set off from the Northwest Territory in 1800, the form of government authorized was that of the first grade; that is, one in which the Governor and Judges had practically complete control. The first law which they adopted was this tax law of 1799, with slight modifications.[4] In 1805, the law[5] in regard to land taxes was elaborated. The Auditor of the Territory was to obtain from Federal officials abstracts of entries and

[1] The law was designed to place the burden of taxation upon those who failed to develop their lands and who held them for speculative purposes. A great part of such lands was owned by non-residents.

[2] Chase, i, pp. 231–233, 267–272, 272–279, 280.

[3] *Ibid.*, pp. 267–272. It was to continue in force until the end of the next session of the Legislature.

[4] *Terr. Laws*, 1801, p. 5.

[5] *Ibid.*, 1805, pp. 30–33.

locations of all lands with the names of the owners, and to transmit the lists to the county assessors. The owners of lands were required to give to the assessor a true account of their holdings. The assessor was to determine the valuation of the land and to inform the owner of the amount, who had the right to appeal to the court of common pleas. It was the duty of the clerk of the court to forward one transcript of the revised abstract to the Auditor of the Territory and another copy to the House of Representatives. The Auditor of the Territory, upon these valuations fixed a tax at such rates (not exceeding those specified by law) as would produce the sum required; he then transmitted an abstract containing the names of owners, with the amount of the tax, to the collector of each county, who was to send the proceeds to the State treasury. This slight increase of central control was partially relaxed two years later. A law[1] of 1807 provided for a quadrennial assessment, made the sheriffs collectors and dispensed with the transmission of duplicates to the House of Representatives. In 1813[2] the office of township commissioner or lister was established. These officials, appointed by the courts of common pleas, had authority to make lists of all taxable property for both county and territorial purposes. The court[3] had power to examine these lists and to lay a county tax on personal property and if necessary on land. The maximum rates and forms of the books of the commissioners were fixed by law. A closer local centralization was secured in the following year by placing the power of assessing property in the hands of a single lister in each county.[4]

From this review of the territorial legislation it is seen that

[1] *Terr. Laws*, 1807, pp. 517 ff. [2] *Ibid.*, 1813, pp. 17–36.

[3] After 1813, the associate judges of the circuit courts. *Terr. Laws*, 1813, pp. 124–131.

[4] *Terr. Laws*, 1813, 2d Sess., p. 136.

the strong central supervision over State and local finances, which was exercised in the early period of territorial existence, was gradually relaxed. The justices of the courts, the county treasurers and sheriffs still owed their appointment to the Governor. This opportunity for central control was either wasted or used very ineffectively; for it was necessary to have frequent resort to legislative interference. The territorial assembly imposed heavy penalties upon the judges of the local courts for failure to appoint assessors and collectors;[1] transferred to sheriffs the duties of certain collectors who refused to collect taxes;[2] directed the delinquent assessors of designated counties to perform their duties;[3] urged the proper officers to take effective measures to compel collectors to pay all arrears due from them;[4] in one case appointed a lister for the county;[5] authorized by special law the clerk of one county to correct mistakes in the assessment of an individual taxpayer;[6] and even appointed a commission to determine the amount which the court of one county[7] should allow as compensation to the lister. At the same time it must be acknowledged, that in the administration of the State offices there was much looseness and confusion in the accounts, and that the evidence of malfeasance is strong.[8]

Decentralization Complete. When Indiana acquired statehood, the local financial administration became in fact completely decentralized. The justices of the peace, the sheriffs, treasurers, county commissioners, the clerks and associate judges of the circuit courts were elected by the people of

[1] *Ibid.*, 1806, pp. 3–5.
[2] *Ibid.*, 1807, pp. 465–7.
[3] *Ibid.*, 1808, p. 39.
[4] *Ibid.*, 1808, p. 44.
[5] *Ibid.*, 1814, pp. 13-14.
[6] *Ibid.*, 1813, p. 48.
[7] *Ibid.*, 1815, pp, 114, 115.
[8] *Terr. Laws*, 1813, 2d Sess., pp. 161, 163; *House Journ.*, 1816–7, pp. 72–4; *Ibid.*, 1817–8, pp. 7, 62.

their respective districts for definite terms; and no longer depended upon the Governor for their appointments, which were terminable at his pleasure. For many years there was little tendency towards centralization. Until 1835 the State revenues[1] continued to be derived almost wholly from taxes on land and polls. County revenues were obtained from specific taxes on live stock, watches, carriages, bond servants, *et cetera;* licenses and business taxes; taxes on town lots; poll taxes; and taxes on land.

The machinery of administration was substantially the same as before. The local body having charge of the county business[2] supervised the administration of the local revenues and acted as a board of review[3] in case taxpayers complained of their assessments. The State had no control over this administration except through the courts, and scarcely more over the collection of its own revenues. The office of county treasurer was re-established.[4] The sheriff collected the taxes and paid the proper shares to the State Treasurer and the county treasurer.[5] Lists of the taxable[6] lands of the county and later certified statements of the amount of money with which the sheriff stood charged, were sent to the Auditor of State, who thus had an opportunity to determine at the time of settlement with the sheriffs the amount of delinquency.[7] There were emphatic and repeated complaints

[1] *Laws*, 1816–7. pp. 130–140, sec. 4; 1817–8, pp. 256–273; 1819–20, pp. 150–3; 1820–1, pp. 8–9; 1821–3, pp. 105–8.

[2] See section 4, below, for the want of uniformity in the organization of county boards.

[3] *Laws*, 1817–18, p. 261.

[4] *Ibid*, 1816–7, pp. 119–20.

[5] *Ibid.*, p. 139.

[6] Under the *Enabling Act* (Sec. 6, clause 5) and the *Ordinance of Acceptance*, lands sold by the United States lying within Indiana were exempt from taxation for the term of five years from the date of sale.

[7] *Laws*, 1816–7, pp. 139, 145; 1819–20, pp. 150–3.

because of delays and delinquencies,[1] disregard of letters of instruction,[2] uncertainty of receipts,[3] failure to furnish the Auditor of State with the certified statements,[4] informality and insufficiency of bonds,[5] indifference of prosecuting attorneys,[6] and the omission of taxable lands from the lists.[7]

These evils, however, must not be attributed entirely to the dishonesty of officials and the absence of a central control. The period from 1819 to 1824 was one of tribulation for the people of Indiana.[8] Fevers were very prevalent and quite fatal. Purchasers of land suffered from the collapse of speculative "booms." The prices of farm products fell to one-third or one-fourth of their former values. The failure of the Bank of Vincennes entailed a loss on many people. With all of these disadvantages, it is not strange that land-holders could not pay their taxes, and that sheriffs could not force their collection even by distress. A perfect tax administrative system would have failed under such conditions. Efforts were, however, made to improve the system. Acts enjoining the prosecution of sheriffs and their securities for failure to collect moneys due the State were passed.[9] Clerks and their sureties were made liable, in case of failure to forward the certified statements, for the

[1] *Report of Auditor*, 1823, in *Spec. Acts*, 1823–4, app. 122. "Not one in ten of the collectors settled their accounts at the treasury within the prescribed time." *Ibid.*, 1831, *House Journ.*, 1831, app. A, p. 8.

[2] *Report of Auditor*, 1820, *House Journ.*, 1820–1, p. 34.

[3] *House Journ.*, 1822–3, p. 34.

[4] *Rep't of Aud.*, 1821, in *Laws*, 1822–3, App., p. 158; *Message of Governor* in *House Journ.*, 1823–4, pp. 15–17.

[5] *House Journ.*, 1823–4, pp. 15–17.

[6] *Rep't Aud.*, 1824, in *House Journ.*, 1823–4, pp. 276–7.

[7] *Laws*, 1825, p. 63.

[8] "*Indiana Gazetteer*," 1850, pp. 117–121.

[9] *Laws*, 1816–7, pp. 153–4; 1819–20, pp. 78, 80; 1820–1, p. 9; *Spec. Laws* 1823–4, p. 115.

whole amount of the tax.[1] Penalties for neglect of duty by officers were increased.[2] In order to prevent the omission of taxable lands from the lists, the Auditor of State was instructed to procure from the United States land offices a complete register and description of all lands sold within the State. Clerks of the several counties were furnished copies of the register of lands lying within their respective counties.[3] The powers and duties of the prosecuting attorney were enlarged, and his interest was stimulated by allowing him 20 per cent. of all sums recovered.[4] Clerks were authorized to publish lists of delinquent tax-payers.[5] With these stricter regulations and with renewed prosperity, came a readier payment of the taxes and a prompter compliance with the laws; so that we find the Auditor rejoicing that "there was but one delinquent out of sixty-three collectors for the year 1830."[6] Henceforth, complaints on these scores grew less frequent and less serious.[7]

2. THE EQUALIZATION OF TAX ASSESSMENTS.

Up to 1830 the chief aim of those favoring modifications of the tax law had been to prevent the loss of revenue through the delinquency of tax-payers or the defalcation of officers. During the next two decades the prime object was to correct the flagrant injustice to the tax-payers which was inherent in the imperfect method of assessing land. From 1799, the listers or assessors had been instructed to tabulate the land in three classes, according to quality and advantages of situation. The law specified the rate of taxation

[1] *Rev. Stat.*, 1824, p. 349.
[2] *Ibid.*, 338–355.
[3] *Laws*, 1825, 63–4.
[4] *Ibid.*, pp. 70–1.
[5] *Ibid*, 1825–6, p. 68.
[6] *Rep't of Auditor* for *1831*, *House Journ.*, 1831–2, App. A, p. 7.
[7] *Rep't of Treas.* for *1832*, in *Laws*, 1832–3, p. 252; *Ibid.*, 1835, *Sen. Journ.*, 1835–6. p. 56; *Ibid.*, 1839, *Doc. Journ.*, *House Rep'ts*, p. 49.

on each 100 acres in each class. This method of assessment by local officers without any revision by a central authority, proved defective, unequal and expensive. Governor Noble, in 1833, made an earnest appeal for a modification of the system. He called attention to the unequal and disproportionate listing of lands in the several counties, to the continual variation in the quality of lands returned, and to the diminution of the first-rate land, notwithstanding the annual increase of the aggregate taxable lands. He urged as the sole remedy for these defects that a new listing and rating of land should be made every five years by commissioners appointed for that purpose,[1] presumably by the Governor or Legislature.

A "Limited Ad Valorem" Tax. For several years the Legislature had been considering the advisability of abandoning the specific tax on land and of substituting in its place "either a general or limited ad valorem" tax.[2] This change was effected by laws passed in 1835 and 1836. The new tax was not a general property tax. All real property (with specific exemptions) and certain kinds of personal property enumerated in the act, were made subject to taxation at a "fair and true valuation." The rate for State revenue was fixed by the General Assembly; that for county revenue, by the county board. Few changes were made in the administrative machinery. The assessors[4] were required to call upon every person liable for the tax, in order to obtain a list of his property and an estimate of its value. Such lists were delivered to the county clerks, who transmitted to the Auditor of State schedules of the valuation of property in their respective counties. The Auditor presented a tab-

[1] *Message, House Journ.*, 1833–4, pp. 14, 15.

[2] *House Journ.*, 1827–8, pp. 279–283; 1832–3, pp. 222–4.

[3] *Laws*, 1834–5, pp. 12–14, 17, 18, 20, 22; 1835–6, pp. 25, 31, 33.

[4] One or more for each county, appointed by the county board.

ulation of these statements to the General Assembly. The forms of the assessment rolls, affidavits and returns, were prescribed in the act. The county boards, in addition to their power to hear personal complaints relative to the listing or valuation of any property and to correct errors, had also the authority to equalize the valuation of the lands between the townships of their respective counties.[1]

This last provision helped to remedy the inequalities in the assessment of lands within the county; but no method was provided for correcting the inequalities among the counties. It was, therefore, quickly discerned that the easiest way for the people of any county to escape the burden of State taxes was to place a low valuation upon their property. In the second year, under the operation of the law, the Treasurer of State deplored "the imperfect character of our revenue laws in reference to assessments," and "the great carelessness and neglect" of the assessors. He estimated "the amount of revenue lost to the Treasury annually by these partial and imperfect assessments," at one-tenth of the whole amount of the actual assessments. He suggested a thorough triennial assessment "by a principal and two assistant assessors"[2] for the entire State. In the same year the Governor regretted the multiplication of deficiencies and declared that the errors were so manifest in the last report as to show a deficit of from two to three hundred thousand acres. He ascribed this to the mode of assessment and to the appointment of unfaithful assessors who did their duty negligently.[3] The Auditor of State in 1838 pronounced the system "radically defective," and asserted

[1] *Laws*, 1834–5, pp. 12–14, 17, 18, 20, 22. Since 1792 taxpayers had had the right of appeal from the action of the listers or assessors to some local board of review. See pages 247, 248, 250, above.

[2] *Rep't of Treas.*, 1837, *Sen. Journ.*, 1837–8, p. 44.

[3] *Message of Governor* Noble, *Sen. Journ.*, 1837–8, pp. 28–30.

that unless remodeled, it would "ultimately beggar the Treasury." He affirmed that out of 8,337,122 acres of taxable lands there had been omitted from the tax lists in that year, 1,265,914 acres, having a value of $12,659,140.[1]

At the ensuing session of the Legislature, a committee of the House reported that a great inequality in the assessment value of land existed; that the committee feared there had been a wanton dereliction of duty on the part of assessors; and that there was suspicion of injustice or collusion in the assessment of lands. They recommended an inquiry into the expediency of organizing a State board of assessors, or district boards with authority and power to equalize taxation in the several counties according to the true intent and meaning of the "ad valorem" system.[2] The only action taken was to reorganize the local boards of equalization by adding to their membership[3] the county auditor and assessor, and to denounce heavier penalties upon the members of the county board for failure or neglect to discharge their duties.[4] Notwithstanding these changes, Governor Wallace, in 1840, asserted that the assessment of land was 2,235,906 acres less than the true amount, according to the report of the Commissioner of the General Land Office.[5]

Revision of the Tax Law. These repeated condemnations of the tax system at last produced some effect. Upon request of the House of Representatives the Auditor in 1840 submitted a report containing drafts of several laws designed to secure a more equitable and cheaper mode of assessing

[1] *Rep't of Auditor*, 1838, *Doc. Journ.*, 1838–9, pp. 173–4 and 187. In the following year, the quantity of land which escaped taxation was 1,446,802 acres. *Rep't of Auditor*, in *Laws*, 1839–40, App., pp. 94–5.

[2] *House Journ.*, 1838–9, pp. 268–270.

[3] See page 257, above.

[4] *Laws*, 1838–9, pp. 26–28.

[5] *Message*, *Doc. Journ.*, 1840–1, *House Rep't*, p. 105.

and collecting revenue. These bills were modeled after the Ohio statutes and were enacted into law with almost no alterations. One of them created the elective office of county auditor. It seems that the business of the clerks had increased to such an extent, that either there were vexatious delays in making out the tax-duplicate, or it was pushed off upon an inexperienced deputy who neither knew nor felt the importance of having it correct.[1] This function and all others in relation to fiscal affairs heretofore performed by the clerk, were now transferred to the county auditor.[2] Another provided for the election of one assessor in each county, who had authority, with the approval of the county board, to appoint one or more deputies to perform any of his duties, except those of making valuations of land and serving as a member of the county board.[3] It was believed that this provision would secure a more equitable and uniform assessment, especially of land, within the county. Another law made the term of the county treasurer three years, increased the amount of his bond and prescribed the manner of collecting the taxes.[4] The duties of the different officers connected with the levying and assessing of the taxes were specified more particularly in still another act, and all personal property was made subject to taxation.

The most important law of this session provided for a change in the mode of assessing real property. Each county board was required to appoint at once an appraiser of real estate to hold office until March 1st, 1842. This seems to have been a temporary office created for the purpose of beginning anew the assessment of real estate. It was the duty of this officer after receiving from the county auditor a list of all taxable lands and town lots to appraise, upon actual

[1] *Rep't of Auditor, Doc. Journ.*, 1840–1, *House Rep't*, p. 234.
[2] *Laws*, 1840–1, pp. 10–17, 24.
[3] *Ibid.*, pp. 25–6.
[4] *Ibid*, 1840–1, pp. 27–32.
[5] *Ibid.*, pp. 34–44.

view, their true value with the value of all improvements. He was required to submit abstracts of his lists and appraisements by townships to the county auditor. The county board, the auditor and the appraiser of each county constituted a special temporary board with power to equalize the valuations of real estate by adding to or deducting from them. After corrections were made, the county auditor was further required to make out and forward to the Auditor of State a general abstract of all assessable property.

A State Board of Equalization. Most essential of all was the provision for a State Board of Equalization. The Houses by joint resolution were to elect one person resident in each judicial circuit[1] who, together with the Auditor of State, were to compose this board. Their duty was to equalize the valuation of real estate in the several counties by adding to, or deducting from, the valuations made by the appraisers and corrected by the county boards such per centum as seemed just and reasonable; but the State Board could not lessen the aggregate valuation of the State. The State Auditor was required to transmit to the several county auditors the per centum to be added to or deducted from the valuations. It was the duty of the county auditor to correct the valuation of real property in conformity therewith. The county board, auditor and assessor of each county were constituted a permanent local board of equalization. They were to meet the first Monday in June, 1842, and annually thereafter, for the purpose of hearing complaints and equalizing assessments and revaluations of all real and personal property; but they had no power to reduce the aggregate value of real property within the county as originally fixed by the State Board of Equalization.[2] The law made no provision for a periodical valuation or equalization. That was to be left to the judgment of subsequent Legislatures.

[1] At that time there were eleven circuits.

[2] *Laws*, 1840–1, pp.3–9.

The State Board of Equalization proved to be very unpopular. It was alleged and industriously circulated, that the Board had the kingly power of augmenting the people's taxes at will. It was represented as an "iron-hearted monster and deadly foe to civil liberty." [1] In consequence of this opposition, the first bill [2] introduced into the House at the next session was one to abolish the State Board of Equalization. It was promptly passed by the Legislature and approved,[3] the Board having had a legal existence of eleven months. However, there was some good derived from this experiment. The appraisement taken under the authority of the act of February, 1841, was not disturbed; and in the Revised Statutes of 1843 it was re-affirmed with some alterations and "considered as the grand levy of the State." [4]

The changes in regard to the powers and duties of the local officers answered "the most sanguine expectations" in the saving effected in the expense of collection, and in the addition of over 3,338,000 acres [5] of taxable land to the assessment list in 1842. The Auditor of State attributed this chiefly to "the vigilance of the county auditors who, under the present system, can give their individual attention to the subject." [6] The system was not popular in all parts of the State, and efforts were made to abolish the office of auditor.[7]

[1] *Sen. Journ.*, 1842–3, p. 189.

[2] *House Journ.*, 1841–2, p. 35.

[3] *Laws*, 1841–2, p, 126, Jan. 13, 1842.

[4] *Rev. Stat.*, 1843, p. 211.

[5] Of the amount added, 1,249,818 acres became taxable for the first time in 1842

The assessment of realty for the years 1842 and 1843 showed a material increase over the years 1840 and 1841.

Year.	*Assessed Value of Realty in Millions.*
1840	$70.8
1841	74.4
1842	85.7
1843	88.4

[6] *Rep't of Auditor*, 1842, *Doc. Journ.*, 1842–3, *House Rep'ts*, pp. 48, 51, 52.

[7] *Sen. Journ.*, 1842–3, pp. 189–196.

By special legislation this was done during the next five years in twelve counties.[1]

In the following years the Legislature prescribed more stringent rules in regard to bonds,[2] removal of delinquent officers by county boards,[3] liability of counties for losses of State revenue sustained by the default of county fiscal officers,[4] and the settlement of annual accounts.[5] Greater odium was placed upon defaulters by the action of the House of Representatives in respect to the expulsion of members who had been guilty of defalcation;[6] by making any county electing a public defaulter to the General Assembly liable for all the expenses of the contest of the election; by requiring the persons so elected to indemnify the county for such expenses; and by directing the Treasurer and Auditor of State to set out in their annual reports the name of any person intrusted with any funds of the State who had defaulted.[7] There was a slight decrease in the amount of the delinquent taxes from 1843 to 1848.[8]

In 1845 the Auditor complained that the boards of equalization in some counties had reduced the valuation of lands as fixed by the State Board of Equalization in 1841 and affirmed by the Revised Statutes of 1843. He urged that such a reduction be prohibited.[9] This was not done, but a re-appraisement of real estate was ordered which was to remain in force until altered by the Legislature. This was to

[1] *Laws*, 1843–4, p. 46; *Ibid.*, 1844–5, pp. 69, 70, 73; *Special Laws*, 1846–7, p. 119; *Local Laws*, 1844–5, pp. 107, 138, 257; 1845–6, p. 115.

[2] *Rev. Stat.*, 1834, p. 112; *Laws*, 1845–6, p. 18.

[3] *Ibid.*, 1843, p. 195.

[4] *Ibid.*, p. 234.

[5] *Laws*, 1845–6, p. 61.

[6] *House Journ.*, 1843–4, pp. 354, 365; *Doc. Journ.*, 1844–5, Pt. ii, p. 139.

[7] *Laws*, 1845, p. 15.

[8] *Rep't of Auditor*, 1845, *Doc. Journ.*, 1845–6, Pt. i, p. 42; *Ibid.*, 1849, *Doc. Journ.*, 1849–50, Pt. i, p. 89.

[9] *Rep't of Auditor*, 1845, *Doc. Journ.*, 1845–6, Pt. i, p. 42.

be carried out by the regular or special assessors.[1] No provision was made for a State Board of Equalization. This was a fatal defect.[2] To the Auditor of State it seemed that the first requisite for improvement was the adoption of some system of State equalization. He asserted that a true valuation of all the property would increase the amount of taxables on the duplicate at least $50,000,000.[3] It was shown that the total valuation of real estate alone, as returned by the United States Marshal in 1850, was about $33,000,000 in excess of the entire assessment for taxation in that year.[4]

A new appraisement of real estate to be valid for five years[5] was ordered by the General Assembly in 1851.[6] A general law for the assessment and valuation of personal property was passed at the same time. An attempt was made to secure a more accurate listing of property by requiring a more minute classification and by imposing heavier penalties on officers and on persons and corporations that failed to return the lists which the assessor left to be filled out.[7] The operation of this law, so far as it affected personal property, was very gratifying.[8] However, there still existed a great inequality among the various counties in the

[1] *Laws*, 1845–6, pp. 108–9.

[2] In thirty-one counties, the total number of acres assessed in 1847 was 93,617 less than it was in 1846; while other counties were taxed upon 214,859 acres more in 1847 than in 1846. From 1842 to 1847, fifty counties showed a decrease in the value of their lands, running from 10 to 50 per cent.; other counties, during the same period, showed an increase ranging from 10 to 25 per cent. *Doc. Journ.* 1851–2, Pt. i, p. 371.

[3] *Rep't of Auditor*, 1850, *Doc. Journ.*, Pt. i, pp. 56–7.

[4] *Doc. Journ.*, 1850–1, Pt. i, p. 61, and Pt. ii, p. 339.

[5] It remained in force for eight years.

[6] *Laws*, 1850–1, pp. 11–19. [7] *Ibid.*, pp. 27–38.

[8] The assessed value of corporation stock increased from $286,000, in 1850, to $2,861,000, in 1851. The assessed value of other personal property rose from $36,200,000, in 1850, to $61,500,000, in 1851, an addition of 70 per cent. *Doc. Journ.*, 1850–1, Pt. i, p. 61, and 1851–2, Pt. i, p. 126.

valuation of lands and improvements.[1] In at least one case the county board of equalization had illegally reduced the aggregate valuation one-half. The Auditor of State was by the Legislature directed to address a circular to the auditors of such counties, ordering them to reinstate upon the tax duplicates the original valuations.[2]

Three Classes of Equalizing Boards. In 1852 provision was made for three classes of boards for equalizing the appraisment of real property. The local board was composed of the auditor, the board of commissioners and the appraiser or appraisers of each county.[3] They had power to equalize the appraisements of the several townships in the county and also the assessment of individuals within any township whenever they deemed the valuation unequal and inequitable. The auditors of the several counties in each congressional district[4] constituted a district board, vested with power to equalize the valuation of lands between the counties within their respective districts. In no case did they have power to alter the assessments of individuals. The State Board of Equalization consisted of delegates selected, respectively, by the district boards from their own numbers and the Auditor of State, who was president of the board. It was their duty to equalize the appraisement of lands between the several congressional districts. They had no authority to equalize the valuations between the counties. The county, district and State boards had no "power to reduce the aggregate valuation of the real property of the

[1] *Rep't of Auditor*, 1851, *Doc. Journ.*, 1851–2, Pt. i, pp. 123–127.

[2] *Local and Special Laws*, 1851–2, p. 151.

[3] For the purpose of equalizing the value of *personal* property and of hearing and determining complaints of owners, the commissioners, the auditors and the assessors (one for each township), were constituted a county board of equalization. *Rev. Stat.*, 1852, i, p. 129.

[4] There were in 1852 eleven districts.

townships, counties, and districts as reported to them respectively;" but if the assessment in any instance was deemed to be too low, the aggregate might be increased.[1]

While the operation of the law offered some encouragement, it could not be pronounced a decided success.[2] There was an increase in 1853 of $47,500,000 (nearly 22 per cent.) in the total assessed valuation; but only about $10,000,000 of this was in real estate values. The action of the State Board in altering the valuations of 1852 was overruled by the Supreme Court on two grounds: (1) the Board was not legally convened because of the absence of the delegate from one congressional district; and (2) it exceeded its powers by attempting to equalize the appraisements between the counties within a district.[3] This decision disclosed two vital imperfections of the law. One of these was removed by an act of 1852, which went into effect the following year. It construed any "words importing joint authority of three or more persons * * * * as authority to a majority of such persons unless otherwise declared in the law."[4] This prevented any dissatisfied member of the Board from nullifying its proceedings by willful absence. The other defect was remedied in 1859 by giving the State Board power to equalize the appraisement of lands between the several counties and congressional districts of the State.[5]

In 1858 provision was made for a regular quinquennial

[1] *Rev. Stat.*, 1852, i, pp. 273–275.

[2] In 1852, the aggregate valuation of lands, including improvements, was increased by the action of county boards of equalization, $737,501, with a considerable increase also in the valuation of townlots. The district boards increased the valuation in 14 counties by a total of $1,770,232, and in 13 counties decreased the valuation $2,067,792, diminishing the total by $297,560. In four districts no changes were made. *Report of the State Board of Equalization*, 1852, *Doc. Journ.*, 1852–3, Pt. i, pp. 198, 199–204.

[3] Hamilton *v.* The State, 3 *Ind. Rep'ts*, 452.

[4] *Rev. Stat.*, 1852, ii, p. 339.

[5] *Laws*, 1859, p. 145.

appraisement of real estate under the same system as that provided in 1852.[1] The result of the new appraisement in the next year more than justified the claims of the officers who urged it. The assessed valuation of real estate increased from $185,000,000 in 1858, to $302,400,000 in 1859, an increment of more than 63 per cent.

In order to secure greater equality in the assessment of personal property within the county, township assessors were in 1865 required to meet at the county auditor's office for the purpose of agreeing upon uniform rates of assessment. The assessors were then to be governed as far as practicable by the list of prices of personal property made out at that time.[2] But this measure did not prove to be effective.

Officials did not moderate their severe criticisms of the tax system. In 1866 the Auditor of State discussing the appraisement of real estate declared that the acts upon the statute books were crude in design, imperfect in detail, and totally inadequate in execution, to secure the end which should be the object of all laws relating to the subject of taxation.[3] In 1872 he declared, emphatically, that it was palpable without further comment that the district boards of equalization had proved worse than failures. "Their history is a story of wrong, unjust and generally illegal action, and it is a lamentable truth that the success of the State Board as constituted at present has been but little better."[4] Still the reports[5] show that in 1864 and 1869 the State Board of Equalization added more than $19,000,000 directly to the valuations as returned to it. Besides, it must not be forgotten

[1] *Laws, Spec. Sess.*, 1858, pp. 4–12.

[2] *Laws, Spec. Sess.*, 1865, p. 173. This clause was omitted in subsequent laws, but was re-enacted in 1899. *Laws*, p. 218.

[3] *Rep't of Auditor*, 1866, *Doc. Journ.*, 1866–7, Pt. i Doc. 3, p. 26.

[4] *Rep't of Auditor*, 1872, pp. 45–6. *Cf.* 34 *Ind. Rep'ts*, pp. 452–5.

[5] *Rep'ts St. Bd. Equalization*, 1864 and 1869.

that even if the Board had added nothing to the total assessment, the alterations made by it distributed the burdens of taxation more equally and justly.[1] Furthermore, the very existence of the Board had a tendency to discourage unfair appraisements. On the other hand, it must be admitted that the composition of the State and district boards exposed them to the evils of local bias and favoritism.

Reorganization of the Boards of Equalization. A thorough revision of the tax system was made in 1872. All property was required to be listed at a "fair cash value." Former law had authorized the assessment of property upon this basis; but long administrative usage and interpretation had given sanction to a much lower valuation. Real property was to be assessed biennially.[2] The board of county commissioners, the auditor and assessor of each county were constituted a board of equalization of the assessment of both real and personal property with powers not only to hear complaints, but to act on their own motion. They had no authority to reduce the aggregate valuation of any township in any instance, nor to increase it, except so far as was necessary to equalize the assessment; but they did have power to set aside the entire assessment of a township or of the whole county, and to order a new one.[3] The district boards were discontinued.

The State Board of Equalization was reorganized and made an *ex officio* body, consisting of the Governor, Lieutenant-Governor, Secretary, Auditor and Treasurer of State.[4]

[1] In 1864, an increase, ranging from 5 to 40 per cent., was made in 58 counties; 34 counties remained unchanged. In 1869, an increase, ranging from 5 to 60 per cent., was made in 42 counties and a reduction, from 3 to 30 per cent., in 12 counties.

[2] *Laws, Spec. Sess.*, 1872, pp. 59, 60, 88.

[3] *Ibid.*, pp. 100, 124–5.

[4] The Attorney-General was added to the Board in 1881. *Rev. Stat.*, 1881, sect. 6402.

It was their duty biennially to equalize the assessments of the real property of the State and annually to assess originally the capital stock of every company or association incorporated under the laws of the State and also the "railroad track," "rolling stock" and capital stock of railroads.[1] The board could not reduce the aggregate assessed valuation in the State; neither could it increase such valuation, except to such an amount (not exceeding one per cent.) as might be reasonably necessary to a just equalization. But this limitation did not apply to the property of railroad companies.[2] At the first session of the reorganized Board of Equalization (in 1873) they increased the assessment of real estate in 25 counties from 5 to 50 per cent., and reduced the same in 13 counties from 5 to 20 per cent. The increase in the total assessed valuation of all property in 1873 exceeded $280,000,000—an increase of more than 42 per cent.[3]

There had been instances in which the county auditors had disregarded the changes which the State Board of Equalization had ordered to be made.[4] Governor Baker had realized the futility of relying upon the local courts for the enforcement of the orders of the State Board. He had, therefore, recommended that whenever the interests of the State were injuriously affected by the official negligence or

[1] See page 287 ff, below.

[2] *Laws, Spec. Sess.*, 1872, pp. 126–7 (sects. 284–290).

[3] Assessments of 1872 and 1873 compared:

	1872.	*1873.*	*Per cent. of Increase.*
Value of personal property, not including corporation property	$205,800,000	$247,100,000	20
Value of real estate	442,000,000	654,500,000	48
Value of all property	653,400,000	933,500,000	42

Rep'ts of Aud., 1872, pp. 138–9; 1873, App. 20–3; 1892, p. 60.

[4] *Rep'ts of Aud.*, 1869, pp. 47–9; 1871, pp. 20–1. *Message of Governor* Baker, 1871, *Doc. Journ.*, 1870–1, ii, pp. 26–9.

official misconduct of a county officer, he should be made liable to an action in some court at the capital of the State. This suggestion in a modified form was embodied in the revised tax law of 1872.[1] The Auditor of State was required, whenever he should learn "that any county, township, city or town, or any well-defined locality thereof, or any particular class of property therein" had been, or might be, released from its just and lawful proportion of State taxes, to commence suit in any county of the State, either against the municipality or against the property unjustly released from taxation or the owners thereof.[2] In case a judgment should be recovered, the Auditor of State was required to levy a rate on the equalized valuation of all property or the particular class of property in such municipality as would pay the State the amount of the judgment and costs. It was made the duty of the county auditor to extend such rates of tax with the State tax of the year directed in the Auditor's certificate. If any county auditor neglected or refused to extend such rate, he was to be removed from his office and was, besides, subject to a fine of $5,000 and damages, to be sued for by the Auditor of State in any county. If the Auditor and proper local authorities could make satisfactory arrangements without a suit, such a course was authorized.[3] No further complaint on this score has been found by the writer.

The enhanced values obtained by the assessment of real estate biennially, did not justify the labor and expense which it involved. A quinquennial assessment was, therefore, authorized in 1875[4]; and in 1881[5] the period during which an assessment was to continue as the basis of taxation was

[1] It was omitted from the *Revised Statutes* of 1881.

[2] In 1875 this was changed to "any court in the State." *Laws*, 1875, p. 41.

[3] *Laws, Spec. Sess.*, 1872, p. 122 (sect. 269).

[4] *Laws, Reg. Sess.*, 1875, p. 142.

[5] *Rev. Stat.*, 1881, sect. 6388.

extended to six years. In 1891[1] it was shortened to four years at which figure it now remains.

In 1877 the State Board of Equalization was relieved of the duty of assessing the capital stock of all corporations except transportation companies.[2]

In the hope of giving local boards of equalization a more representative character their composition was changed in 1881. The county commissioners and four free-holders, selected from different parts of the county by the Judge of the Circuit Court, were constituted the board of equalization.[3] For the purpose of properly listing and assessing property and equalizing and collecting taxes, county auditors, the Auditor of State and all boards of equalization were given the right to inspect and examine the records of all public offices and the books and papers of all corporations and other tax-payers without charge.[4]

For several years it had been the duty of the Auditor of State to furnish county auditors and other officers suitable forms and instructions. He was further authorized in 1881 to order and enforce a correct and, as far as practicable, a uniform system of book-keeping by county treasurers and auditors so as to afford a suitable check upon their mutual action, and to insure the thorough supervision and safety of State, county and other funds.[5] There were obstacles in the way of the prompt enforcement of this law. Many counties were using under contract various patent systems, to be furnished for a term of years. The efforts of the Auditor of State to supplant these systems were ignored or resisted, especially as there were no legal means of enforcing the system of book-keeping which he might prescribe. The Auditor

[1] *Laws*, 1891, pp. 239–40.
[2] *Laws, Reg. Sess.*, 1877, p. 141.
[3] *Laws, Reg. Sess.*, 1881, p. 656.
[4] *Ibid.*, p. 619.
[5] *Laws, Spec. Sess.*, 1881, pp. 690–691.

of State did, however, insist upon a uniform method of settlement with the county treasurers so far as the State's revenues were concerned.[1]

With all of its amendments the assessment law still contained some contradictory sections and lacked some material provisions. There was need of more definite power on the part of the Auditor of State to enforce and compel the adoption of his opinions and instructions by the local tax officers. The legal period for the session of the State Board of Equalization was too short in the years in which the assessment of real estate was made. Besides, they had no means of obtaining information in regard to the value of lands, other than that furnished by the abstracts. There was no power to send for persons or papers and no funds were set apart to meet the expenses of a judicious investigation. The Auditor of State actually thought it would be a great deal better to re-establish the district boards of equalization than to continue the existing methods.[2]

One great obstacle to the realization of uniformity and equality in taxation was the great variety of interpretations which township assessors and county boards of review put upon the meaning of a "fair" cash value. This permitted a large proportion of personal property to escape taxation, throwing a greater burden upon real estate. To eliminate, as far as possible, this variable element in the assessment of all property, the tax reform law of 1891 established as the basis of valuation the "true cash value" or the price which could be obtained at a voluntary private sale.[3]

In order to give greater unity to the local administration, the elective office of county assessor was revived in 1891. It is made his duty to examine carefully the tax duplicate and all other records and papers in the offices of county officials,

[1] *Rep't of Aud.*, 1882, p. 69.
[2] *Ibid.*, 1886, pp. 5, 6.
[3] *Laws*, 1891, pp. 213 and 236, sect. 53 and 95.

and to list and assess at its cash value upon the books of the proper township assessor all omitted assessable property of every kind. It is also his duty to advise and instruct the township assessors of his county as to their duties and for this purpose to visit each during the month of April or May in each year.[1] He also holds annual conferences with these officers for the purpose of agreeing upon uniform rates for the assessment of all kinds of personal property. In determining such rates the assessors are influenced, though not controlled, by the deliberations of the State conference of county assessors.[2]

The local board of review was again made an *ex officio* body, composed of the assessor, auditor and treasurer of each county. Its powers of examination and investigation were enlarged by giving it authority to send for persons and papers and to compel witnesses to answer under oath, touching any question concerning the assessment or valuation of property.[3] Four years later, in accordance with a recommendation of the State Board of Equalization, two free-holders, appointed by the judge of the circuit court, were added to the board.[4]

The State Board of Tax Commissioners. Important changes were also made in 1891 in the organization and powers of the central authority charged with the equalization of the tax assessments. The adoption of the name "State Board of Tax Commissioners," signifies of itself that its function was something other than that of equalizing valuations. The Board since then has been composed of the Governor, the Secretary of State, the Auditor of State, and "two skilled and competent persons" appointed by the Governor for a term of four years. There is a benefit to be

[1] *Laws*, 1891, pp. 243–5.

[2] See page 276, below.

[3] *Laws*, 1891, pp. 245–248.

[4] *Laws*, 1895, p. 75.

gained from the non-official element in the Board. A body made up entirely of *ex-officio* members with other duties to discharge would not have had the time to devote to the performance of the business of the Board with its greatly enlarged powers. Besides, these members appointed upon the sole responsibility of the Governor, have no pre-election promises to fulfill.

The general supervisory and administrative duties of the Board are the following: To prescribe all forms of books and blanks used in the assessment and collection of taxes; to construe the tax and revenue laws of the State and instruct officers in relation to their duties with reference to taxation and assessments, whenever requested to do so by any officer acting under any such laws; to see that all assessments of property are made according to law; especially to see that all the railroad and other corporations of the State are assessed and taxed as provided by law; to see that all taxes due the State are collected; to enforce penalties prescribed by any revenue law of the State for disobedience of its provisions; to determine, whenever necessary, the amount required to be levied upon property in the several counties to cover any deficiency in the State revenue, not otherwise provided for; to make such rules and regulations as the Board shall deem proper to effectually carry out the purposes for which it is constituted; to report to the General Assembly at each session the whole amount of revenue collected in the State for all purposes (classifying as to State, county, township, and municipal purposes, with the sources thereof) the amount lost and the causes of the loss, the proceedings of the Board, and such other matters of information concerning the public revenues as they may deem of public interest; to make investigation and inquiry concerning the revenue laws and systems of other States and countries; to recommend to the General Assembly such amend-

ments of the revenue laws as seem proper or necessary to remedy injustice or irregularity in taxation, or to facilitate the assessment and collection of public revenues; to see that each county in the State is visited by at least one member of the Board as often as once each year in order to hear complaints concerning the law, to collect information concerning its workings, to ascertain that all revenue officers comply with the law, and that all violations thereof are punished, and to listen to all proper suggestions as to amendments to it. These duties are to be performed, as far as possible, by the two members specially appointed. The Governor, Auditor and Secretary of State are required only to take part in the proceedings of the Board when it performs the duties which formerly devolved upon the State Board of Equalization, and at other times when it may be necessary in order to effectually carry out the purposes of the law.[1] The Board still retains the power to assess the property of railroads[2] and to equalize the assessment of real estate; and the legal means of enforcing such authority are greatly amplified. They are not to be bound by any reports or estimates of railroad, real estate or other property as returned to the county auditors or to the Auditor of State, or certified in connection with appeals or applications for revision, but are to appraise and assess all property coming before them for assessment, directly or indirectly, at its true cash value according to their best knowledge and judgment. They have power to send for persons, books and papers; to examine records, and to hear and question witnesses. They were also vested with authority to punish by fine or imprisonment or both any one who refused to appear and answer questions. The right of appeal in such cases lay to the Criminal Court of Marion County. The sheriffs of the several counties were required to serve all process and exe-

[1] *Laws*, 1891, pp. 249–252.

[2] See below, sect. 3, ii.

cute all orders of the Board.[1] That part of the law giving the Board power to punish persons for contempt was declared invalid by the Supreme Court.[2] In equalizing the valuation of property in the different counties, they are to consider separately railroad property, lands and town and city lots; and to make their additions to, or deductions from, the assessed valuation of each class.[3] The State Board has no jurisdiction over individual assessments except in cases of appeal from the county boards of review or in the assessment of "railroad property."[4]

The decisions of the State Board are final. The courts have no power to alter assessments fixed by boards of equalization legally organized, where no fraud but only a mistake is charged.[5]

The practical operation of the law disclosed some defects, which were in part corrected in 1895. The absence of the right of appeal by the local taxing officers made it possible for a partial board of review to assess a local corporation at a low figure and thus enable it to escape its fair share of the tax burden.[6] To prevent this, any township or county assessor, or any member of the county board of review, or any tax-payer of the county is given the right, upon serving the required notice, to appeal to the State Board of Tax Commissioners from any original assessment made by the county board of review, and from any of its orders increasing or decreasing any assessment, or refusing to increase the same or to assess hidden or omitted property.[7] Thus, the

[1] *Laws*, 1891, p. 252.

[2] Langenberg *v.* Decker, 131 *Ind. Rep'ts*, 471.

[3] *Laws*, 1891, p. 255.

[4] *Ibid.*, p. 252, and Jones *v.* Rushville Nat'l Bk., 138 *Ind. Rep'ts*, 87.

[5] Rhoads *v.* Cushman, 45 *Ind. Rep'ts*, p. 85.

[6] *Rep't State Board Tax Commissioners*, 1895, p. 8.

[7] *Laws*, 1895, pp. 79, 80.

representative of the State has the same right of appeal as the private individual.

In order to secure greater uniformity in the assessment of personal property and to impart a more thorough knowledge of the subject of taxation and of the duties of officers under the laws, the State Board has annually since 1894 called the county assessors together in a general conference. These meetings have resulted in much good.[1] In 1901, in accordance with the recommendations of the State Board,[2] it was by law made the duty of that body to call such annual conferences. While the attendance of assessors is not compulsory, the counties are required to compensate all those who do attend, for their expenses within a maximum fixed by the law.[3]

After one year's experience under the law of 1891, the Auditor of State pronounced it "the most equitable and soundest tax measure Indiana has ever known."[4] The State Board of Tax Commissioners in 1895[5] said: "The financial standing of the State has materially improved since it went into effect." The chief source of gratification was the great increase in the assessed valuation of corporate property. The relatively small percentage of growth in the value of personal property disclosed the weakest point in

[1] *Rep't of Aud.*, 1900, p. 12.

[2] *Rep'ts St. Bd. Tax Commissioners*, 1895, pp. 7, 8; 1897, pp. 5, 6.

[3] *Laws*, 1901, pp. 172–3.

[4] *Rep't of Aud.*, 1892, p. 5. The basis for this satisfactory opinion was found in the following figures:

	1890.	1891.	Per cent. of Increase.
Assessed value of real estate	$553,937,744	$898,600,323	44
Assessed value of railroad property	66,206,295	161,039,169	143
Assessed value of telegraphs, etc.	698,672	1,871,012	168
Assessed value of personal property	236,831,676	293,745,534	24
Total assessed value	$857,674,387	$1,255,256,638	46

[5] *Rep't of St. Bd. of Tax Commissioners*, 1895, p. 4.

the law. Comparing the assessed values of real estate and personal property in 1891 with their true valuation as given in the United States Census of 1890, it is seen that the assessed value of real estate is 69.7 per cent. of its true value, while the assessed value of personal property is only 36.4 per cent. of its true value.[1] The Auditor of State in a recent paper lamented the fact that "the public treasury is defrauded, levies are higher, and perjury made semi-respectable because of this wholesale dodging and sequestration" of personal property—especially in the form of mortgages.[2] In the hope that a central control over the assessment of personal property would prove as effective as it has been in the case of real estate, the power was granted in 1901 to the State Board of Tax Commissioners to equalize the valuations of personal property.[3] No data from which the merits of the law may be judged are yet available. But it may be safely predicted that even this centralization of authority will not correct the evils which are inseparable from the general property tax.

3. THE TAXATION OF CORPORATIONS

I. *The Evolution of a Centralized Administration.* In the first years of statehood there were very few private corporations. The banks held the most important rank. Almost from the beginning it was recognized that a special form of taxation was needed to reach the tax-paying ability of these institutions. As early as 1820, a State tax of twenty-five cents was imposed upon each $100 share of paid-up bank stock. Such property was to be listed in the name of the

[1] United States Census 1890; *Wealth, Debt and Taxation*, Pt. ii, p. 16. Compare *Rep't of Aud.*, 1900, p. 12.

[2] Read before the Conference of the State Board of Tax Commissioners and the County Assessors. See *Indianapolis News*, Feb. 7, 1902, p. 10.

[3] *Laws*, 1901, pp. 45–6.

cashiers of the respective banks, and the tax was to be paid by the corporation to the local tax collectors.[1] Practically no revenue was derived from this source.[2]

The fifteenth section of the law chartering the State Bank of Indiana imposed an annual tax of twelve and one-half cents on each share of paid-up stock held by private individuals in lieu of all other taxes and assessments.[3] This act was passed at the time when the adoption of the *ad valorem* system of taxation was being seriously discussed. Therefore, it was stipulated that, in case this change should be made, such stock should be "subject to the same ratio of taxation as other capital not exceeding one per cent.," including the twelve and one-half cents on each share.[4] The anticipated step was taken in the following year. There was opposition on the part of the stockholders to the payment of the tax, which led to collisions between the bank officers and the State and county authorities. To remedy this, the collection was placed entirely in the hands of State officers. The Board of directors of each branch was required to transmit annually to the Auditor of State a certification of the amount of stock owned and paid for by each individual stockholder, whether resident or not. The Auditor, thereupon, drew on such branch in favor of the Treasurer of State for the amount of the State taxes fixed by law. This was in lieu of all county and road taxes. It was the duty of the cashiers of the respective branches to deduct from the

[1] *Laws*, 1819–20, pp. 150 ff. The same provision was contained in the *Revised Statutes* of 1824 (p. 339) and 1831 (p. 427).

[2] At that time there were only two banks in the State. One of these was closed by the courts within the next two years and the other soon afterwards withdrew from business. No other bank was incorporated until 1834.

[3] This was deducted from the dividends and allowed to accumulate in the bank until 1843–5. It constituted a part of the permanent school fund. See page 59 above.

[4] *Laws*, 1833–4, pp. 15, 16.

dividends of each stockholder the sum sufficient to pay his tax.[1] This law was re-enacted in 1843 and 1852 with no important changes, except that the clause exempting the bank from local taxation was omitted.[2]

After the authorization of "free banks," having permission to issue notes upon bonds or stocks deposited with the Treasurer of State, he was directed to retain so much of the interest which might accrue upon the securities as might be sufficient to pay the taxes of any such bank and to remit the amount to the treasurer of the county in which the bank was located.[3]

The laws of 1835 and 1836, establishing the new system of taxation, were not explicit in regard to the method of assessing corporations. The purpose seems to have been to tax every corporation as a unit upon its tangible property as returned by the president or some other responsible officer of the institution. The stockholders were required to list their stocks along with their other taxable property, but were allowed a deduction for the value of that part of the "stock * * * * converted into property" upon which the corporation as a whole paid taxes.[4]

State officers were not slow to see that the methods used in the assessment of other personal property were inappropriate in determining the valuation of corporate property. Governor Wallace in 1839 referring to the "grossest negligence" displayed in the assessment of corporation stock, declared that the private stock in the State Bank of Indiana alone amounted to $1,334,050, between four and five hundred thousand dollars more than the whole amount of cor-

[1] *Laws*, 1840–1, pp. 46–7.

[2] *Rev. Stat.*, 1843, p. 232–3; 1852, i, pp. 144–5.

[3] *Laws*, 1855, p. 17.

[4] *Ibid.*, 1834–5, ch. ix, sects. 1, 2, 12; 1835–6, ch. vii, sects. 1, 2, 11, 26.

poration stock returned.[1] Besides, there were the stocks of the savings institutions, the loan offices and insurance companies.[2]

The Revised Statutes of 1843 prescribed more fully the method of arriving at the value of corporate property. A statement was required from each company, specifying the amount of real estate owned, the amount of capital stock actually paid in, the amount of capital stock owned by the State and by any charitable or literary corporation, and the location of the principal office.[3] The cash value of the stock was to be ascertained from the sales of stock or in any other manner; deductions were to be made for the value of real estate owned by the company and the amount of stock, if any, belonging to the State or to any incorporated literary or charitable institution. The value thus ascertained, together with the value of the corporate real estate, constituted the amount on which the tax of such a company was assessed. The taxes were paid out of the funds of the company and ratably deducted from the dividends of those stockholders whose stock was taxed, or charged upon the stock, if no dividend was declared.[4] Abstracts showing all these facts were to be transmitted by the county auditor to the Auditor of State. The law did not prevent evasion and undervaluation.

Transportation Companies. The amount of corporation stock returned for assessment gradually diminished.[5] There

[1] The amount of corporation stock returned was $869,630.

[2] *Message, House Journ.*, 1839–40, p. 15.

[3] The personal property of each corporation was to be assessed in the township where the principal office was located, or, in case no principal office was maintained, in the township where the operations of the company were carried on. *Rev. Stat.*, 1843, p. 210.

[4] *Rev. Stat.*, 1843, pp. 229–31. Private stock in the State Bank was still taxed as in 1841. See pages 278–9 above.

[5] The valuation of corporation stock, not including the bank stock, had declined

was complaint also, because the valuations of transportation companies which were returned, were unequally distributed among the counties through which the roads ran. These conditions plainly demonstrated the uncertainty and inefficiency of the mode of assessing such property by means of local officers. In 1851 [1] an experiment was tried, which was a crude attempt to centralize the assessment of each transportation company in the hands of a single county auditor in place of leaving that responsibility to the officers of the several counties within which it was situated.

Every domestic corporation, except transportation companies and the State Bank, was assessed as a unit after the method prescribed in 1843.[2] In the case of domestic transportation companies [3] the resident stockholders returned to the assessors of the counties in which they resided the amount and value of their stocks and bonds for which they were assessed individually. In order to reach the non-resident stockholders of such corporations, each company was required to submit to the auditor of the county in which its principal office was situated a list of the stock owned by non-residents, with its value. It was the duty of the auditor to enter the name of the company upon the tax duplicate with the amount and value of the stock owned by non-residents and to assess the taxes upon it. These rates were to be paid by the company to the county treasurer, who remitted the State taxes to the State treasury and divided that portion intended for local purposes among the counties in proportion to the mileage.

from $301,298, in 1842, to $122,364, in 1849. One railroad alone had individual stock amounting to four or five hundred thousand dollars, yielding large dividends, upon which, according to the Auditor of State, not a cent of taxes had ever been assessed or collected. *Rep't of Auditor*, 1847, *Doc. Journ.*, 1847–8, Pt. i, pp. 89–90.

[1] *Laws*, 1851, pp. 33–4.

[2] See page 280 above.

[3] Railroad, plank road, turnpike, canal or bridge companies.

It seems to have been the intention of the law to assess railroads incorporated in other States (practically the only foreign transportation companies at that time) upon their tangible property situated in Indiana. The act declared that, if any railroad company should not have its principal office in this State, the president or some other responsible official should furnish to the auditor of the county where the road first entered the State, a schedule of the amount and value of all real estate owned by the company in the State, the cost of construction of the road lying within the State, and the amount invested in machinery and rolling stock. The machinery and rolling stock were to be assessed by the auditor in the proportion which the length of the road in Indiana bore to the length of the completed line. The taxes were apportioned as in the case of stock owned by non-residents. The real estate of such companies seems to have been assessed as other real estate. For the first time in Indiana it was recognized, though in an ill-defined way, that a railroad is a unit, and that the value of any particular portion of it can be determined only by considering it as a related part of the unified system. In spite of its imperfections and obscurities[1] the assessed value of corporation stock rose from $286,516 in 1850, to $2,861,855 in 1851, and to $6,000,000 in 1852.

The law was revised in 1852[2] so as to require every transportation company to furnish the proper auditor[3] a list of all of its stock, with a statement dividing the aggregate amount among the several counties in proportion to the value of the superstructure, buildings and real estate of such company in each county. The entire tax was paid by the

[1] The law is almost unintelligible, but the interpretation given here seems to be the reasonable one.

[2] *Rev. Stat.*, 1852, i, pp. 113–4.

[3] See pages 281, 282, above.

corporation and apportioned on this basis. The machinery and rolling stock were assessed as in 1851. The appraisement of corporation property in 1853 amounted to $14,000,000, an increase of more than 167 per cent. These laws failed to reach the value of the railroad properties which was represented by bonds and mortgages; and on the other hand, it subjected a part of the property situated in other States to taxation in Indiana.

The Auditor of State, believing that many of the returns made by the railroads in 1853 were imperfect, urged the auditors of those counties where the principal offices were situated, to make out from the best information obtainable fair and true statements of the value of their taxable property, and place the amounts on the tax duplicates. A majority of the auditors promptly investigated the matter and put additional assessments upon their duplicates; but others refused to respond to the request.[1] In view of these omissions and the disregard of his appeal, the Auditor recommended that the railroad companies be compelled to report directly to him instead of the county auditors, and asked that full power be given him to investigate the truth of such returns if, in his opinion, the interests of the State should demand it.[2] No immediate action in this direction was taken.

In 1858 it was provided that real estate which was owned by transportation companies but which was not used in the operation of the road should be deducted from the aggregate value of the stock, and the portion situated in Indiana should be assessed locally in the same way as lands owned by private persons. The value of the stock remaining after subtracting the value of such real estate was to be divided

[1] *Rep't of Aud.*, 1854, pp. 99, 100. The total additional assessment resulting from this investigation was $2,852,564.

[2] *Ibid.*, p. 125.

among the separate counties in proportion to the value of the superstructure, buildings and real estate owned by the company and used in its operation in each county. The rolling stock and machinery were assessed in the same proportion that the length of the lines in this State, completed, bore to the entire length of lines.[1] These changes, though they relieved from taxation the real property of interstate roads which was situated outside of the State, did not increase the efficiency of the system because its administration was still left in the hands of local officers.

The growing dissatisfaction with the system of assessing railroad property impelled the legislators to try another experiment in 1859. Statements and schedules were required to be made to the several appraisers of the counties through which any railroad ran. These officers were to meet at a point on the line of the road designated by the Auditor of State, and then appraise the entire value of the road per mile through their respective counties, taking into consideration the location of the road, the competition of other roads, the earnings above current expenses and repairs and its condition for present and future business.[2] This law proved impracticable because in many counties there were several lines and the appraisers could not meet others of different lines on the same day. They were all called together at Indianapolis and adjourned to meet upon each of the roads on different days. As all the appraisers did not attend these meetings there arose a question as to the validity of the assessments. In consequence the Auditor of State consented to the re-appraisement under the provisions of the law of 1852.

The State Board of Equalization had occasion in 1859 to decide what was the extent of its authority over the assess-

[1] *Laws, Spec. Sess.*, 1858, pp. 25–6.

[2] *Laws*, 1859, p. 5.

ments of railroads. They concluded after due consideration, that they had no power to equalize such appraisements. They recommended, however, that the Legislature take action to remedy the great inequalities existing.[1]

The appraised value of railroad property[2] declined so rapidly that some further legislation was deemed imperative. In 1865 the law was amended so as to require a more complete schedule of the property of every road, and a statement of the gross earnings and the average net earnings above the current expenses and repairs during the five years immediately preceding. The time of the meeting of the appraisers was changed to any date within a specified period. These officers were to "appraise the value of said road per mile by making a valuation of the railroad, and all its fixed property, situate within this State . . . . . and such proportion of the rolling stock and movable property used in operating the whole road . . . . . as the length of the railway in this State bears to the entire length thereof." Real estate not used in its operation was to be assessed locally. The appraisers apportioned the assessment among the counties according to the mileage. A heavier penalty was imposed upon railway officials for failure or refusal to comply with the act. The State Board was, strangely enough, granted power to hear appeals made by the railroads and to give them relief;[3] but the State had no right of appeal. The assessments made under the previous laws were legalized. The law was still exceedingly deficient. The State Board of

[1] *Rep't St. Board Equalization*, 1859, *Doc. Journ.*, 1859, Pt. i, p. 242.

[2] Appraised value of railroad property:

Year.	*Appraisement.*	*Year.*	*Appraisement.*
1857	$15.7 mil.	1861	$1.9 mil.
1858	10.0 "	1862	not given in the reports.
1859	9.7 "	1863	
1860	6.6 "	1864	8.6 mil.

[3] *Laws, Spec. Sess.*, 1865, pp. 121–3.

Equalization, in an address to the Legislature in 1869 setting forth the defects of the assessment system, asserted that the railroad property of the State had cost not less than $80,000,000, yet it was returned for taxable purposes at less than $10,000,000.[1] The Board of Equalization had no power to increase any appraisement under the law of 1865. Moreover, no one was authorized to report the appraisements of railroads to either the Auditor or the State Board of Equalization.[2]

From all this experimentation we may infer that there was a determination to exhaust every possible means before adopting the rational method of assessment by central authorities. But the facts were stubborn; and they finally convinced the most skeptical of the necessity of State control over this subject.

In the thorough revision of the tax laws in 1872,[3] the corporations were not neglected and their assessment was closely centralized. All domestic corporations were to list their tangible property just as individuals. In addition, they were required to deliver annually to the county assessor a sworn statement, setting forth: (1) the name and location of the company; (2) the amount of capital stock authorized and the number of shares; (3) the amount of capital stock paid up; (4) the market value, or if no market value, then the actual value of the shares of stock; (5) the total amount of indebtedness, except that for current expenses, excluding the amount paid for the purchase or improvement of property; (6) the assessed valuation of all its tangible property. These statements were to be scheduled by the assessor and returned to the county auditor. He in turn forwarded them

[1] The assessment in 1872, with a trackage of 3,649 miles, was $150,000 less than it was in 1854, with only 1,317 miles.

[2] *Rep't St. Bd. Equalization*, 1869, in *Rep't of Auditor*, 1869, pp. 47–9.

[3] *Laws, Spec. Sess.*, 1872, pp. 59, 60, 76–7, 128.

to the State Auditor, who laid them before the State Board of Equalization. The State Board assessed the value of all such corporations; and the amounts were certified by the Auditor of State to the auditors of the respective counties. The Board had power to adopt such rules and principles for ascertaining "the fair cash value of such capital stock," including the franchise, as seemed equitable and just to it.[1] The process of arriving at these valuations was to deduct the assessed value of the company's tangible property, as returned by the county assessor, from the value of the stock given by the company in their sworn statement. In case the tangible property of the company equaled or exceeded the true value of the capital stock, there was no assessment made by the State Board; in case it was less, the company was assessed for the difference.[2] This law did not apply to foreign corporations which, in consequence, escaped taxation. The shares of capital stock in any State or national bank were to be assessed and to be taxed at the place where the bank was located at the same rate as other taxable personal property.[3]

The most important provisions of the law of 1872 were those regulating the assessment of railroads. These were modeled after the laws of Illinois. The tangible property of railroads was classified in four categories: "railroad track;" real estate not included in "railroad track;" "rolling stock;" and personal property not included in "rolling stock." Every railroad company was directed to return to the Auditor of State schedules of the property denominated "railroad track" and "rolling stock;" a description of the

[1] *Laws, Spec. Sess.*, 1872, pp. 59, 60. See page 268 above.

[2] *Rep't Aud.*, 1873, pp. 26–7.

[3] *Laws, Spec. Sess.*, 1872, pp. 77–8. This was a repetition of the law of 1867, excepting the clause of the latter which exempted the State Bank and National Banks from municipal taxation. *Laws, Reg. Sess.*, 1867, pp. 216–8.

character and construction of the railroad bed, track and superstructures; and a statement concerning the capital stock such as was required for other corporations.[1] In addition, each company had to file with the auditors of the counties in which the road was located, a statement showing: the property held for right of way; the length of the main and all other tracks and turnouts in each county and in each city or town in the county; and the area of each tract of land, with the value of improvements and stations located on the right of way. The right of way, including the superstructures, stations and improvements on it, was held to be real estate for the purpose of taxation and denominated "railroad track." This property was assessed by the State Board of Equalization. Its value was distributed among the several counties, townships, cities or towns in the proportion that the length of the main track in each municipality bore to the whole length of the road in the State; except the value of side tracks, station houses, depots, machine shops and other buildings of the road, which, although assessed by the State Board, were to be taxed in the municipality in which they were located.[2] The real estate, including the stations and other buildings and structures thereon,[3] other than that denominated "railroad track," was to be listed and assessed locally as other lands or lots by the county assessor. The movable property of railroads was held to be personal property and denominated, for the purpose of taxation, "rolling stock." Schedules containing detailed inventories of all such property and showing the number of miles on which the "rolling stock" was used in Indiana and elsewhere, were to be returned annually. The "rolling stock" was also assessed by the State Board of Equalization and

[1] See page 286 above. *Laws, Spec. Sess.*, 1872, p. 81.

[2] *Laws, Spec. Sess.*, 1872, pp. 79, 80, 128.

[3] *Ibid.*, p. 80. On this point the law was ambiguous.

apportioned among the taxing districts according to the ratio which the mileage in each bore to the whole length of the main track, both within Indiana and without the State. The tools and materials for repairs and all other personal property except "rolling stock" were listed and assessed like the personal property of individuals. In addition, it was the duty of the State Board to assess the capital stock of railroad companies. The aggregate amounts of the assessments were to be distributed among the several counties in the same manner as the "railroad track."[1] This provision was intended to reach the State's share of that intangible value represented by the difference between the total value of the railroad and the total value of its tangible property.[2]

The law in regard to the taxation of telegraph companies was much simpler. They were required to submit annually to the Auditor of State schedules, such as other corporations furnished, and, in addition, a statement as to the length of line operated in each county and in the entire State. Their office furniture and other personal property were listed and assessed where they were situated. The capital stock was assessed by the State Board and apportioned in the same way as "railroad track."[3]

As a result of this law many thousand dollars' worth of corporation property were placed upon the duplicates of 1873, which had before that time escaped taxation entirely.[4] The increase in the amount of the assessment of railroads was especially gratifying: this was in excess of 243 per cent

[1] *Laws, Spec. Sess.*, 1872, pp. 80, 128.

[2] The method of determining that value was the same as that used in the assessment of domestic corporations. See page 287 above.

[3] *Laws, Spec. Sess.*, 1872, pp. 82, 83, 128.

[4] The assessment of railroads increased from $11,448,050, in 1872, to $39,279,752, in 1873. About $4,000,000 of intangible property of other corporations were also added to the assessment list.

It was found desirable a few years later to retrace one of these steps towards centralization. The State Board of Equalization had difficulty in getting returns upon which it could base the assessment of the capital stock of local corporations. It was evident that the county boards of equalization could more readily obtain the necessary information. These bodies were, therefore, empowered in 1877 to assess the capital stock of all corporations except railroads, express companies and other transportation companies.[1]

In 1873 there was a still further differentiation of the corporation tax. The administration of the new taxes was completely centralized. It was made incumbent upon every foreign insurance company to report semi-annually to the Auditor of State the gross amount of all receipts obtained in Indiana on account of insurance premiums for the preceding half year, and at the same time to pay into the treasury of the State $3 on every $100 of receipts less the amount actually paid for losses within the State.[2] In case of a refusal to comply with the law, the Auditor had power to revoke the authority of the company to do business. By the same act all foreign and domestic express and sleeping-car companies were required, under a heavy penalty, to make similar reports and at the same time to pay to the State three per cent. of the gross receipts from passage fare and one per cent. of freight receipts. When only a part of such receipts was derived from passage fare or freight charges within the State, a return was required of that proportion of such receipts as the distance traversed in this State bore to the whole distance paid for.[3] The validity of that part of the law affecting express companies and sleep-

[1] *Laws, Reg. Sess.*, 1877, p. 141.

[2] *Laws, Reg. Sess.*, 1873, p. 208. An experiment of this kind had been tried from 1849 to 1852. *Laws*, 1848–9, pp. 229–231. See also page 64 above.

[3] *Laws, Reg. Sess.*, 1873, p. 207.

ing-car companies was denied. So generally was the existence of the law ignored that only one of the many corporations complied with its requirements.[1]

The use of gross receipts derived from business within the State as the basis of taxation was extended in 1881 to foreign telegraph and telephone companies.[2] Foreign sleeping-car companies[3] paid a tax of two per cent. of that part of the gross receipts which bore the same proportion to the total receipts that the distance traversed in the State bore to the whole distance paid for.[4]

In general, these companies refused to pay the taxes imposed, alleging the unconstitutionality of the act.[5] The law taxing sleeping-car companies was soon tested in the courts. In 1883 it was declared unconstitutional by the Circuit Court of the United States for the District of Indiana on the ground that the law imposed a burden upon interstate commerce.[6] Later the Attorney-General with the conviction that the statute properly construed imposed only an excise tax, commenced suit against another sleeping-car company. When the case reached the Supreme Court of the State, it was again decided, in 1887, adversely to the State.[7]

These decisions forced the State to shift its position to other ground. The carriage of money packages, articles *et cetera*, the transmission of messages by telegraph and by telephone, and the carriage of persons in palace cars and sleeping-cars, when conducted for profit, were declared to be privileges, for which such companies should pay the State

[1] *Rep't of Aud.*, 1875, pp. 89, 90.

[2] *Rev. Stat.*, 1881, sects. 6353–4.

[3] Domestic express and sleeping-car companies were no longer subject to the tax. *Ibid.*, sect. 6352.

[4] *Ibid.*, sect. 6355. [5] *Rep't of Aud.*, 1882, p. 68.

[6] State *ex rel.* Wolf *v.* The Pullman Palace Car Company, 16 *Fed. Reporter*, 193.

[7] State *v.* Woodruff Sleeping and Parlor Coach Company, 114 *Ind. Rep'ts*, 155.

annually a certain per centum of the gross receipts accruing from business originating and terminating in the State.[1]

In spite of amendments made in 1881 the law regulating the taxation of railroads remained ambiguous as to the assessment of buildings or improvements located on the "right of way."[2] When the local authorities attempted to tax these improvements, payment was resisted on the plea that all such buildings were included in the valuation by the State Board, when, in fact, the State Board had no official knowledge of their existence or location. The Auditor of State in 1882 changed the form of reports so as to require this information, and property formerly untaxed to the amount of $1,073,781 was added to the tax duplicates.[3]

The limited time allowed for the sessions of the State Board of Equalization was not sufficient to enable them to give the assessment of railroads the attention it demanded. The Auditor recommended in 1890 the appointment of one or more agents, who should gather the facts and information necessary to give the State Board a more thorough and comprehensive knowledge of the affairs and tax-paying ability of railroads.[4] In the following year Governor Hovey strongly urged the enactment of a law providing for the establishment of a board of railroad commissioners for the State, who should have the general supervision of all railroads operated in the State, with power to inquire into all questions of neglect or violations of the law by these companies, and to make all necessary investigations to ascertain the amount of business done by such roads and their value for taxation.[5] The bills of this nature which were introduced,[6] were not passed. However, a step almost as centralizing in

[1] *Laws*, 1889, pp. 272–3, 389–90, 397–9.

[2] *Rep't of Aud.*, 1882, pp. 66–7.

[3] See page 288 above.

[4] *Ibid.*, 1890, p. 8.

[5] *House Journ.*, 1891, p. 28.

[6] *Ibid.*, p. 260; *Sen. Journ.*, 1891, p. 428.

its tendency was taken. The State Board of Equalization was transformed into the State Board of Tax Commissioners with two non-official members, who devote their public services wholly to the business of this board.[1] Out of the fifty years experience, there has developed the present strongly centralized system of taxing corporations. It is based upon the legislation of 1891, modified somewhat by subsequent acts. Without following the changes in detail the existing methods of taxing corporations will be summarized here.

II. *The Present System of Taxing Corporations.* The two fundamental principles[2] of the system are these: (1) All property, tangible or intangible, is subject to taxation and must be assessed at its true cash value; and (2) all corporate property, including capital stock and franchises, except where some other provision is made by law, is to be assessed to the corporation as to a natural person in the name of the corporation at the place where its principal office in this State is situated. Corporations may be classified according to the manner of assessment into three classes: those assessed by local officers; those assessed by State officials who apportion the appraisement among the counties according to a fixed rule; and those paying an excise tax or business tax directly to the State treasury.

(*a*) *Corporations assessed by local officers.* All domestic corporations, except those specifically designated hereafter, are assessed by the township assessors and the county boards of review. They are required to submit to the proper township assessor a statement containing the facts called for in 1872[3] and, in addition, items showing: (1) the difference in value between all tangible property and the capital stock; and (2) the name and value of each franchise or privilege owned or enjoyed by each corporation.[4] These corporations

[1] See sect. 2 above.

[2] *Laws of Taxation*, 1901, sects. 12, 53, 95.

[3] See page 286 above.

[4] *Laws of Taxation*, 1901, sect. 73.

are assessed upon their *tangible* property by the township assessor just as individuals are. In case the value of the *capital stock* and *franchise* of any such corporation exceeds that of the tangible property listed for taxation, the excess is assessed to the corporation by the county board of review. If no tangible property is returned or found and the capital stock has a value, it is assessed at its true cash value. If the value of the tangible property is greater than that of the capital stock and franchises, no assessment is made by the county board of review.[1]

State and national banks (but not savings banks) are excepted from the operation of this law. The shares of such institutions are assessed to the owners thereof by the township assessor. A statement concerning the financial condition of each bank is required to be furnished the assessor to enable him to determine the true cash value of the capital stock. From this is deducted the value of real estate and other tangible property which is assessed to the bank as a corporation, and the shareholders are assessed personally for the remainder.[2]

Building and loan associations are also exempt from taxation as corporations. But the shareholders must pay taxes upon the true cash value of their shares. Those who have not borrowed money are charged with the true value of their shares, and must list them with other chattels. Those who have borrowed are taxed on the value of their real estate which is pledged as security.[3]

Foreign bridge and ferry companies are assessed by the township assessor upon the actual value of their property,

[1] *Laws of Taxation*, 1901, sect. 74.

[2] *Ibid.*, sects. 60–1.

[3] *Ibid.*, sect. 89. This law was adopted after two unsuccessful experiments: (1) to assess each stockholder on the fair cash value of his paid-up stock (*Rev. Stat.*, 1881, sect. 6373); and (2) to assess the association as a unit upon the total amount of money paid in, less the amount loaned out. (*Laws*, 1887, p. 40.)

which is estimated by taking into consideration the tangible property and the character of the business as indicated by the gross receipts.[1]

(*b*) *Corporations assessed by the State Board of Equalization.* The corporations assessed by State officers are without exception transportation companies (domestic and foreign). The confusion, inequality, and injustice arising from the conflicting claims and acts of different taxing districts has made this centralization inevitable.

The meaning of the term railroad has been extended[2] so as to include not only steam railroads, but all street railways and elevated or underground railroads, whatever the power by which their vehicles are propelled. The statements and schedules which must be returned are somewhat more elaborate than those prescribed in 1872; but the grouping of the tangible property into four classes remains the same.[3] No detailed method of making the assessments is laid down in the law. The State Board of Tax Commissioners is not bound by the returns made by the railroads.[4] They take into consideration all the elements which are usually considered in fixing the value of any kind of property;[5] that is, the tangible property, the earning capacity, the condition of the property, the expense of operation, the value of the stock, the amount of bonds issued, *et cetera*. From statements made in the judicial decisions upon this question it may be inferred that "the mileage rule" is used[6] in determining what proportion of the total value of an interstate railroad should be assessed for taxation in Indiana.

Telegraph, telephone, express, and sleeping-car companies,

[1] *Laws of Taxation*, 1901, sect. 72.
[2] *Laws*, 1901, p. 121.
[3] *Laws of Taxation*, 1901, sects. 76–88.
[4] *Ibid.*, sect. 129.
[5] Pittsburg, etc., Ry. Co. *v.* Backus, 133 *Ind. Reports*, 546.
[6] See note 5 above, also 154 *U. S. Reports*, 421.

"fast freight" lines, and pipe-line companies not wholly situate in one county, are required to return to the Auditor of State annual statements similar to those demanded of railroads with some other items peculiar to their business.[1] In making the assessment[2] the State Board of Tax Commissioners first ascertains the true cash value of the entire property owned by such an association or corporation by adding to the market value of the aggregate shares (or to the actual value of the capital, in case there are no shares of stock) the total amount of mortgages upon the property. This is the "gross value." To ascertain the true cash value of the property in Indiana, they deduct from the gross value the assessed value of the real estate situate without the State and not specifically used in the general business of the company; of the remainder they take that proportion which the mileage operated by the company in Indiana bears to the total mileage operated.[3] This gives the entire value within Indiana. From this is deducted the assessed value of all the real estate, structures, machinery and appliances within the State subject to local assessment. The residue is assessed by the Board to the company and apportioned among the counties on the mileage basis. A similar apportionment is made among the townships of the respective counties. The county auditor adds to the value apportioned, the valuation assessed locally upon real estate, structures, machinery, et cetera, and extends the total upon the tax duplicates.[4]

(*c*) *Corporations paying a business or excise tax.* In the third class of corporations mentioned above[5] there are only

[1] *Laws of Taxation*, 1901, pp. 131–8. [2] *Ibid.*, pp. 138–140.

[3] In the case of a pipe-line company, it is the proportion of the length, size and value of its pipe lines.

[4] *Laws of Taxation*, 1901, pp. 140–1.

[5] See page 293 above.

two kinds—foreign insurance companies and foreign and domestic navigation companies. The tax on foreign insurance companies is a continuation of that imposed in 1873.[1] The tax on navigation companies is the latest phase of legislation on this subject. Every domestic navigation company and every owner of any ship or other vessel registered in Indiana under the navigation laws of the United States, is required to pay annually into the treasury of the State a sum equal to three cents per net ton of registered tonnage of all vessels owned. The capital stock of any such company is not taxed as in the case of other corporations; but all personal property owned by it, excepting vessels and other actual tangible property outside the State, is subject to taxation at the place where the home office is situated.[2]

The tax laws of 1891 and 1893 met with opposition from a large and influential class of citizens and tax-payers. But their constitutionality was sustained in all the courts from the lowest to the Supreme Court of the United States.[3] The corporations, as a rule, no longer resist their enforcement, though protesting that they are unjust.

While the tax law is still imperfect, it has improved the financial standing of the State, and has distributed the burdens of taxation more equitably. The increase of 143 per cent. in the assessed value of railroads and 168 per cent. in the value of telegraphs for 1891 was very pleasing indeed.[4] But the increase in the ten years since has not been so encouraging. In fact, the assessment of railroads for 1901 was

[1] See page 290 above. *Laws of Taxation*, 1901, sect. 67.

[2] *Laws*, 1901, pp. 185–6. If this law should be tested in the courts of the United States, it would, in all probability, be held unconstitutional.

[3] 141 *Ind. Rep'ts*, 281; 144 *Ind. Rep'ts*, 549; 154 *U. S. Rep'ts*, 421; 166 *U. S. Rep'ts*, 185; 163 *U. S. Rep'ts*, 1.

[4] See page 276, foot-note 4, for figures.

$4,000,000 less than it was in 1891.[1] In the meantime the railroad mileage in the State had increased from 1890 to 1900, 454 miles, which would represent an investment of at least $12,000,000. Still more important is the fact that the years 1900 and 1901 were the most prosperous[2] the railroads had enjoyed for many years.[3] In the case of unincorporated telephone companies the valuation is made by the local assessors, generally at a figure below that fixed by the State Board on similar incorporated companies. The method of assessing banks is not satisfactory. The cause of the dissatisfaction is found in the fact that the authorities differ in the way of arriving at their value. In some counties the total of the capital stock, surplus and undivided profits is taken as the basis of valuation; in others, the capital stock alone is taken. The assessments varied in 1901 all the way from $40 to $283 per share. The banks in large cities and manufacturing districts were assessed at a lower rate than those in the small towns.[4] The best remedy for this may be found in clothing the State Board of Tax Commissioners with supervisory or direct administrative authority over the assessment of banks.

[1] Assessment of corporate property 1901:

Railroad Companies	$156,973,151
Street Railway Companies	7,746,452
Telephone Companies	4,436,663
Telegraph Companies	2,514,812
Express Companies	1,881,140
Sleeping-Car Companies	872,811
Pipe-line Companies	8,883,582
Total	$183,308,611

[2] *Statistical Abstract of the U. S.*, 1901, pp. 390, 393–4.

[3] This criticism loses some of its force by the recent action of the State Board of Tax Commissioners, raising the assessment of steam railroads for 1902 above that of 1901, $5,824,836. Still, the present assessed value is only $1,758,818 in excess of that of 1891.

[4] State Tax Commissioner Parks M. Martin in the *Indianapolis News*, Feb. 6, 1902, p. 13.

Indiana has not by any means realized an ideal system of taxation. In order to show the superiority of the present partially centralized administration over the former decentralized method of taxation, it is not necessary to claim that the system is perfect or even better than that existing in some other State. It is the opinion of the writer that the evidence herein presented does demonstrate that centralization of administration has greatly improved the system by decreasing tax-evasion and equalizing the burdens of taxation. The fact that a large proportion of personal property has escaped assessment does not invalidate this conclusion, but rather emphasizes its soundness. For it is in this particular field that the State Board of Tax Commissioners had almost no authority until 1901. Even if the conferring of more extensive power upon the State Board should fail to correct the defects which are inherent in the general property tax, this would not disprove the fact that great benefits have been already derived from its existence. Such a failure would, however, furnish additional testimony that the evils of the general property tax are so deep-seated that they cannot be up-rooted even by a strong-toned central authority. It would confirm the opinion that justice in taxation can be realized only by a further disintegration of the general property tax and a separation of the sources of local and State revenues by the assignment of fees, business taxes and taxes upon real property to local authorities, and inheritance taxes, corporation taxes based upon net earnings or capital and funded debt, and, possibly, an income tax to the State government—the administration of the State revenues being placed under the supervision of State officers. Amendment of the Constitution would be necessary to accomplish some of these ends. Under the existing restrictions[1] of that instrument, a centralized adminis-

[1] State *ex rel. v.* Indianapolis, 69 *Ind. Rep'ts*, 375.

tration of the tax system is essential to maintain its present efficiency or to contribute to its improvement.

4. THE ABSENCE OF STATE CONTROL OVER LOCAL FINANCES.

It has already been shown how thorough was the central supervision over local finances in the early territorial period[1] and how this control was gradually abandoned until complete decentralization was attained at the time of the adoption of the Constitution.[2]

Not only was there lack of uniformity in the keeping of accounts, but there was great diversity in the organization of the the bodies charged with the county and township business. This was due to the evil of special legislation. At one time there were in existence four kinds of county boards: an elective board of three county commissioners;[3] a board composed of all the justices of the peace of the county;[4] a board composed of one justice of the peace from each township of the county;[5] a board composed of one supervisor from each township.[6] In some counties the township officers were elected;[7] in others they were appointed by the board performing the county business;[8] in others some officers were elected and others appointed.[9] The officers of the same name in different counties did not have the same powers and duties. As early as 1835 Governor Noble saw the possible evil and confusion that might arise from this want of uniformity.[10] In 1841 the Auditor of

[1] See pages 246–7, 251–2 above. [2] See pages 252–3 above.

[3] *Laws*, 1816–7, p. 115, and 1826–7, pp. 15–18.

[4] *Rev. Stat.*, 1824, p. 86.

[5] *Laws*, 1825–6, p. 84, and 1826–7, pp. 15, 18. [6] *Ibid.*, 1825, pp. 43–6.

[7] *Ibid.*, 1825, pp. 43–6; 1825–6, p. 84; 1826–7, pp. 15, 18; 1828–9, p. 63; 1829–30, p. 27.

[8] *Laws*, 1828–9, pp. 20, 21, 23. [9] *Ibid.*, p. 23; 1834–5, p. 72.

[10] *Message, Sen. Journ*, 1835–6, p. 22.

State urged the introduction of a more perfect organization of the civil townships which would dispense with a number of local officers and would insure the greater safety of funds.[1]

The Constitution of 1851 prohibited such special legislation.[2] The next year all special laws providing for the transaction of public business in counties and townships were repealed and general laws were substituted.[3] The township trustees[4] thus created were elected, and were practically independent of the county and State authorities in the levying of their taxes and the management of their moneys. In 1859 a slight check was imposed upon their powers by requiring the "advice and concurrence" of the county commissioners in making their tax levy.[5] For nearly half a century the township trustee possessed more unlimited authority and discretionary power than any other officer in the State. His functions as a school officer and as overseer of the poor have been described above.[6] He had almost a free hand in the levying of taxes and in the appropriation of revenues for two political corporations—the civil township and the school township. Besides, the auditing of his accounts was superficial and perfunctory. His authority was simply autocratic.

The power of the boards of county commissioners under the laws of 1852 was unrestricted by any central authority except that afforded by legislative and constitutional limitations. Not five years had passed before a "wholesome system of retrenchment . . . especially in county expenditures" was urged.[7]

[1] *Rep't of Aud., Doc. Journ.*, 1841–2, *House Rep'ts*, p. 27.

[2] *Constitution*, Art. iv, sect. 22. [3] *Rev. Stat.*, 1852, i, pp. 224–5, 495–6.

[4] Three in each township; after 1859, one in each township.

[5] *Laws*, 1859, p. 222. [6] Pages 116–118, 149, 193–195 above.

[7] *Communication of Treas. of State to House*, Jan. 12, 1857, *Doc. Journ.*, *39th Sess.*, p. 407.

Beyond an inquiry into the amount of the fees and salaries of county officers,[1] nothing was done for many years. However, there was an unmistakable popular demand for reform in the administration of county affairs, and for the reduction of the fees of county officers.[2] Several laws providing a graduated scale of salaries for county officers were passed[3] but were held to be unconstitutional. It was necessary, therefore, to amend the Constitution so as to enable the Legislature to enact a law grading the compensation in proportion to the population and the necessary services required.[4] Not until 1895 was a satisfactory law of this kind passed.[5]

The high fees and salaries were not the only items of excessive expenditure. The indebtedness of local corporations increased rapidly. In general, the local taxation always greatly exceeded that imposed for State purposes. The aggregate amount not infrequently surpassed the State tax from three to four times.[6] The importance of some additional limitation upon the power of imposing local taxes, appropriating revenues, and contracting debts was recognized. In 1874 the Auditor of State recommended that the debts of counties, townships, and cities should be reported every year.[7] In 1881 the power of local authorities to contract debts was restricted by a constitutional amendment, limiting the amount of indebtedness which might be incurred by any "political or municipal corporation" in the State.[8]

[1] *Laws, Spec. Sess.*, 1861, p. 43.

[2] *Message of Governor* Baker, *Doc. Journ.*, 1871, ii, p. 37; *Message of Governor* Williams, Jan. 10, 1879, p. 22.

[3] *Laws*, 1871, pp. 25–40; 1875 (*Spec. Sess.*), pp. 31–49; 1879 (*Spec. Sess.*), pp. 130 ff.

[4] *Constitution*, Art. iv, sect. 22.

[5] *Laws*, 1895, pp. 322–358.

[6] *Rep't of Aud.*, 1873, p. 41.

[7] *Ibid.*, 1874, p. 32.

[8] *Constitution*, Art. xii, as amended.

In 1875 and 1883 a legal limitation upon the indebtedness which a township trustee might incur was provided, by compelling him to procure an order from the county board of commissioners when it might be necessary to incur any debt which would exceed the amount of funds available during the year for its liquidation.[1]

These laws were not sufficient to remedy the abuses; and in 1885 a number of township trustees brought disgrace upon themselves and suspicion upon the office by the fraudulent issue of township orders.[2] The only other restraints imposed upon local financial officers were the requirements that county auditors should publish in a newspaper a statement showing all allowances made by the county commissioners at each session;[3] and that township trustees should carefully register and number all orders and warrants, and should post and publish an annual statement.[4] Such provisions did not meet the needs of the case. More stringent measures were demanded. Serious charges of inefficient management and fraudulent conduct on the part of county commissioners and township trustees continued to be made.[5]

There were two remedial courses open: either the State should extend its supervisory authority over these local financial officers; or there should be a complete separation of their legislative and executive functions. At the session of the Legislature in 1895 a bill for an act creating the office of Inspector of County Officers and Records was introduced in the Senate but indefinitely postponed.[6] In

[1] *Laws, Reg. Sess.*, 1875, p. 162; 1883, pp. 114–5.

[2] *Rep't Supt. Pub. Instr.*, 1885–6, p. 177. [3] *Laws*, 1893, p. 342.

[4] *Laws*, 1895, p. 159.

[5] Papers read before the Indiana State Board of Commerce, Dec. 30, 1896, and Jan. 18, 1898. See *The Indianapolis News* of same dates; also editorial in same, Dec. 31, 1896.

[6] *Sen. Journ.*, 1895, pp. 121, 163.

1897 and 1899 similar bills, with broader scope were introduced in the House and Senate but failed to pass.[1]

So strong was the conviction that additional safeguards should be thrown around officers clothed with financial authority, that recourse was had to the other alternative. There was created in each county a council with power to levy taxes, make appropriations, borrow money, and sell or purchase real estate for the county when it exceeds $1,000 in value.[2] The administrative powers of the county commissioners are still retained by them. In a similar way the chief legislative powers of the township trustee were transferred to a deliberative body known as the township advisory board. It is empowered to fix the rate of taxation for township purposes, appropriate revenues, audit the accounts of the trustee and to authorize the borrowing of money.[3] These laws have not yet had a thorough test; but the first results seem to be satisfactory to the advocates of reform.[4]

In case this legislation proves inadequate, the next movement will probably be in the direction of a stronger central supervision. This would necessitate some yielding of our attachment to local self-government. Still, that sacrifice would be in the interest of more scientific methods of bookkeeping, a regular and systematic auditing of accounts, a reduction in expenditures and a prevention of fraud and embezzlement. Such at least has been the experience of those States[5] which have adopted a central control over local finances.

[1] *House Journ.*, 1897, pp. 82, 208; 1889, pp. 98, 178, 395, 935, 1665. *Sen. Journ.*, 1897, pp. 62, 177; 1899, p. 400.

[2] *Laws*, 1899, pp. 346, 349, 350, 354, 359, 360.

[3] *Laws*, 1899, pp. 150–1, 154, 155–6.

[4] *Rep't of the Indiana Department of Statistics*, 1899 and 1900, pp. 64–67. *The Indianapolis News*, Sept. 18, 1901.

[5] Especially North Dakota, Montana, Wyoming.

CHAPTER VI

POLICE

THE police power of a State is defined by the Supreme Court of the United States to be the power "to prescribe regulations to promote the health, peace, morals, education, and good order of the people, and to legislate so as to increase the industries of the State, develop its resources, and add to its wealth and prosperity."[1] This is a very comprehensive power, and extends to innumerable interests of the individual.

As society becomes more complex, and as the activities and responsibilities of the State widen, the new conditions and exigencies demand on the part of the administrative officers special knowledge and technical skill which the ordinary police officers do not possess. Hence, there must be a differentiation of the police authorities. Experts must be selected who are capable of dealing with the new conditions, and possibly it may be found advisable to put these officers directly under the control of State officials. This process has gone on until now we commonly use the term police to signify that body of officers whose duty it is to preserve order and to prevent and detect crime.[2]

The prime reason for granting the police power to the government is that the rights and liberty of the individual

[1] Barbier *v.* Connolly, 113 *U. S. Reports*, 27, 31.

[2] Compare Fairlie, J. A., *Municipal Administration*, p. 12. Such officers as sheriffs, constables, marshals, patrolmen or policemen, police magistrates, *et al.*, are included in the police force.

may not be subverted by the license or selfishness of others. But this extensive power in the hands of the government in turn exposes the people to a new danger—the tyranny of the government itself. For this reason it has been the traditional policy of the various commonwealths of the United States to grant to the local governments some participation in the exercise of the police powers.[1] Local communities are given in many cases the right to make ordinances and to select the persons charged with the enforcement of both these rules and the general laws of the State.

This deputation of authority to persons selected by the local communities does not imply that police officials are local or corporate officers. Decisions of the courts in several States have held that such officers are the agents of the State government.[2] The Supreme Court of Indiana has declared that "the police officers of a city are not its agents or servants."[3]

In previous chapters it has been seen that special classes of officers have been intrusted with the administration of the educational, penal and correctional systems and the supervision of the public health. In this chapter we shall consider the various agencies which have been provided for the preservation of the peace, the protection of the life and health of the persons engaged in certain trades and professions, and for the safeguarding of the pecuniary interests of the people.

[1] Burgess, J. W., *Political Science and Comparative Constitutional Law*, Vol. i, pp. 215–6.

[2] See cases cited by Goodnow in *Municipal Home Rule*, pp. 88–90, 133–141; also by Fairlie in *Municipal Administration*, pp. 142–3. On the other hand, the courts of other States have held that such officers are local and municipal officers.

[3] City of Lafayette *v.* Timberlake, *et al.*, 88 *Ind. Rep'ts*, p. 332. Compare also State *ex rel.* Law *v.* Blend *et al.*, 121 *Ind. Rep'ts*, p. 522; and State *ex rel.* Terre Haute *v.* Kolsem, 130 *Ind. Rep'ts*, 437.

I. *The Preservation of the Peace.* The second law[1] passed in the Northwest Territory provided for the establishment of courts and the appointment of court officers. A sheriff in each county was to be nominated by the Governor to continue in office during his pleasure. It was the duty of the sheriff to keep the peace and to execute all writs and processes appertaining to his office. He was also responsible for the safe-keeping of prisoners and the security of the jail.[2]

The act of 1790, authorizing the courts of general quarter sessions to divide the counties into townships,[3] also empowered them to appoint in each township one or more constables who performed the services usually incumbent upon such officers. In 1799 their duties in respect to the preservation of the peace were extended and the office was made obligatory.[4] There was no central control over constables other than that furnished by the courts. Although the sheriffs and coroners were appointed by the Governor and held at his pleasure, there is no evidence to show that the authority of the Governor was utilized to maintain a highly efficient police force.

After the adoption of the Constitution in 1816 the sheriffs and coroners were elected by popular vote with a tenure of two years.[5] Constables were usually appointed by the county boards.[6] In 1831 they, also, were made elective officers.[7]

The laws designed to protect life and property could not have been very effectively enforced, for we find the Revised

[1] Chase, i, p. 94–96, Aug. 23, 1788.

[2] *St. Clair Papers*, ii, p. 220. See also page 165 above. In the same year the office of coroner was established, which was also filled by the governor's appointees. Chase i, p. 102.

[3] See page 22 above. [4] Chase, i, p. 238–9.

[5] *Constitution of 1816*, Art. iv, sect. 25. [6] *Laws*, 1816–7, p. 154.

[7] *Rev. Stat.*, 1831, pp. 103, 105. This general rule was modified by special laws.

Statutes of 1852 legalizing private associations which were formed "for the purpose of detecting and apprehending horse thieves and other felons." The members when "engaged in arresting offenders against the criminal laws" of the State, were "entitled to all the rights and privileges of constables."[1] This proved to be a power dangerous to personal liberty. For these associations arrested and punished individuals without bringing them before the ordinary legal tribunals of the State. The Governor recommended[2] the repeal of the law and at the same time urged that a reasonable compensation be allowed to the sheriffs and other police officers in order that honest and capable men might be willing to accept the offices. The law was not repealed but was modified somewhat in 1865,[3] and still remains on the statute book as evidence of the incompleteness of the constabulary system.[4]

Soon after the Civil War there were charges that the efficiency of the police force in the cities was impaired and the purity of elections corrupted by employing it for political ends. It was believed that if some scheme should be adopted which would put the force on a non-partisan basis, it would improve the service, reduce its cost, and preserve the sanctity of the ballot. Suggestions of this nature were made from time to time; and in 1871 a committee of the Senate recommended a bill providing for the organization of a metropolitan district for Indianapolis.[5] In 1883 the Governor, Secretary, Auditor and Treasurer of State were constituted a board to appoint in any city of 29,000 inhabitants

[1] *Rev. Stat.*, 1852, i, 318–320.

[2] *Message of Governor*, *Doc. Journ.*, 1858–9, Pt. ii, p. 175.

[3] *Laws*, *Spec. Sess.*, 1865, p. 196. [4] *Rev. Stat.*, 1901, sects. 4491–5.

[5] *Sen. Journ.*, 1871, pp. 345–8. The bill was indefinitely postponed by a vote of 23 to 22.

according to the census of 1880,[1] a bi-partisan Board of Metropolitan Police to consist of three commissioners. The term of the commissioners was three years; but they were subject to removal at any time by the appointing board. These Boards were required to take oath that they would not remove or appoint any policeman or officer because of his political opinions. They had power to appoint a superintendent of police and all members of the police force, who were to be selected equally from the two leading political parties of the city. All appointees were to serve during good behavior, but were removable for cause by the Boards. They also had power to make general rules and regulations for the government and discipline of the force.[2] The opponents of the bill claimed that it violated the principle of local self-government and that its main purpose was to give one political party, having a majority of the central appointing board, control over the police and a large part of the expenditures of the two leading cities of the State.[3] The composition of this board[4] did lend some color to the accusation. But the law seemed to work satisfactorily, and, excepting the provisions requiring of members a residence of three years and restricting the appointment to two political parties, its constitutionality was upheld.[5]

A new act was passed in 1889, creating a Board of Metropolitan Police and Fire Department in each city having 29,000 or more inhabitants. The first members of the board were elected by the General Assembly, and their successors were to be appointed by the mayor of each city. They

[1] The only cities in this class were Indianapolis and Evansville.

[2] *Laws*, 1883, pp. 89–91.

[3] *Brevier Legislative Reports*, 1883, p. 234.

[4] The Governor belonged to one party and the other members belonged to the party dominant in the General Assembly.

[5] The State *ex rel.* Law *v.* Blend *et al.*, 121 *Ind. Rep'ts*, pp. 514–523.

were to be selected from the two leading political parties. They had complete control of the police and fire departments.[1] Without delay two cases came before the Supreme Court, and within sixty days after its enactment the law was declared void on the following grounds: (1) It granted special privileges and immunities by creating a residence qualification and prescribing a political test; (2) It placed the police and fire departments of certain cities and the property connected therewith under the exclusive control of a board elected by the Legislature, and thereby denied the communities the right of local self-government;[2] (3) the power to make such appointments was an executive function which could not be exercised by the Legislature.[3] In one decision the courts pointed out with emphasis that the right to maintain a fire department was an element of self-government which was vested in the people of the municipalities;[4] that the provisions of the statute relating to the management of that department were void; and that, inasmuch as these provisions were so intermingled with, and dependent upon, the other provisions, the whole act fell.[5] With practically the same reasoning the Supreme Court has recently declared invalid[6] a later law authorizing the Governor to appoint a

[1] *Laws*, 1889, p. 222–5.

[2] The court admitted that if the act related alone to the management of the *police* department a different question would have been presented, p. 437.

[3] Evansville *v.* State *ex rel.* Blend, 118 *Ind. Rep'ts*, pp. 435, 436–7, 440–7; and State *ex rel.* Holt *v.* Denny, Mayor, 118 *Ind. Rep'ts*, pp. 457–467, 469, 475, 478–80.

[4] State *ex rel.* Holt *v.* Denny, Mayor, 118 *Ind. Rep'ts*, pp. 473–5.

[5] Another law of the same year (*Laws*, 1889, pp. 247–254), empowering the General Assembly to appoint in certain cities a board of public works and affairs, with exclusive control over the streets and other thoroughfares, public buildings, and the supplying of water and light, met the same fate. (The State *ex rel.* Jameson *v.* Denny, Mayor, 118 *Ind. Rep'ts*, pp. 389, 394, 400.)

[6] See report of the decision in *The Indianapolis News* for Feb. 26, 1902, p. 1.

board of public safety for the city of Fort Wayne, with exclusive control over matters relating to the fire and police departments.[1] The law of 1883 was amended in 1891[2] so as to avoid the unconstitutional features. In the opinion upholding its validity the court more clearly set forth the theory that "in providing for the appointment of officers connected with the constabulary of the State, there is not an invasion of the right of local self-government." "A municipal corporation is not clothed with a vested right in a public office, nor indeed does it possess a vested right in public property."[3] The party which at first opposed this centralization of authority has since extended it,[4] until now the law applies to all cities[5] having a population exceeding 10,000 inhabitants with the exception of Indianapolis, Evansville, Fort Wayne, Terre Haute and South Bend. The success of the experiment is indicated by the words of Governor Matthews: "Their [the metropolitan police boards'] management of the police affairs of their respective cities has given such eminent satisfaction that there seems to be no disposition to return to the old system."[6]

This centralization of control over the police of cities did not remedy some of the evils which resulted from the lack of control over the sheriffs and constables. In cases of riots or mobs, threatening violence to persons or property, the sheriff alone had authority to request the Governor to send militia to quell the disturbance. There were instances where

[1] *Laws*, 1901, pp. 142–8.

[2] *Ibid.*, 1891, pp. 90–2. Not more than two members were to be of the same political party. Indianapolis was not included within its scope.

[3] State *ex rel.* City of Terre Haute *v.* Kolsem *et al.*, 130 *Ind. Rep'ts*, p. 437.

[4] *Laws*, 1893, pp. 284–5; 1897, pp. 90–96; 1901, pp. 24–5.

[5] Fourteen in number. The exclusion of the five chief cities from the operation of the law seems to be inconsistent; but non-partisanship in the management of the police departments is secured by the provisions of their special charters.

[6] *Message of Governor* Matthews, 1895, *House Journ.*, 1895, p. 58.

sheriffs, influenced by partisan, friendly or other considerations, were dilatory or neglectful in the performance of their duties. The Governor, therefore, recommended the enactment of laws enabling him in his own name to institute in the courts, actions to enjoin and prevent the commission of any acts against property, public peace, morals, health or public policy, or in violation of any statutes; empowering him to suspend for a limited period any sheriff or other executive officer of the counties or cities who should fail or refuse to perform the duties enjoined upon him by law, and to appoint temporarily some person in his place, the Governor being required to report the facts to the General Assembly; and authorizing him to apply to the circuit court of the county for the removal of any sheriff or other executive who should persistently fail, neglect or refuse to perform the duties required of him by law.[1] A bill of such a purport passed the House, but failed to come to a vote in the Senate, in spite of a special message from the Governor urging its passage. However, authority was granted the Governor to send, upon his own information, the militia into any county where a disturbance might prevail; and the right to call upon the Governor for the militia was given to the mayor of any city, a court of record sitting in any city or county, or any judge thereof, as well as to the sheriff.[3] This makes it less likely that the peace and property of a community will be exposed to mob violence because the sheriff may sympathize with the unruly element.

It is not merely in times of excitement and turbulence that the State suffers on account of the absence of central control over the police. Annually it loses a considerable revenue through the evasion of the laws requiring a license

[1] *Message, House Journ.*, 1895, pp. 33–4.

[2] *House Journ.*, 1895, pp. 390 and 794; *Sen. Journ.*, 1895, pp. 872 and 1072.

[3] *Laws*. 1895, p. 116, sec. 116.

for the sale of liquors. One influential paper[1] has estimated that "there are more unlicensed drinking places[2] in the State than licensed." It is the duty of the peace officers—town and city marshals, policemen, sheriffs and constables—to enforce the liquor laws;[3] but their indifference or connivance gives opportunity for numerous violations of them. It has been suggested that there should be created the office of State license inspector, with authority either in person or by deputy to visit any place where liquor is sold and demand the exhibition of the license. Such an officer would be free from the local and personal influences which seduce local officers from an impartial enforcement of the law.

An even more radical departure is favored by numerous members of the State Municipal League. In brief, they advocate the appointment of constables by the township advisory boards. These officers should be under the supervision of a county superintendent of police, who would be superintendent or chief of police in the county seat. County and township police officers should be under the general supervision of a State Superintendent of Police appointed by the Governor and subject to removal for cause. This officer would have only advisory power over the local police forces. It is claimed that this intimate connection between all the police agents of the State would overcome the indifference of local officers, maintain public order more easily, facilitate the capture of criminals, make private detective associations[4] unnecessary, remove some pretexts for white-cap organizations, drive criminals out of the State, and eventually would effect a considerable saving in public expenditures. [5] These changes would not institute an infringement upon the rights

[1] *The Indianapolis News.*

[2] Drug stores, grocery stores and open bars.

[3] *Laws*, 1895, p. 251, sect. 7.

[4] See page 308 above.

[5] See *Indianapolis News*, Oct. 11 and 19, 1899.

of local communities to regulate those matters which pertain exclusively to the comfort, well-being and prosperity of the people of the locality. For it has been shown that the preservation of the peace, and the protection of life and property are State functions,[1] and the State cannot shift this responsibility. It is reasonable, therefore, to insist that the State must devise some system of inspection and supervision by which it can compel the local officers to administer the police regulations prescribed by the Legislature, in harmony with the expressed will of the State. It remains for Indiana to do in this field, what she has already done in the sphere of education, charities and correction, public health and, in part, taxation.

III. *The Protection of the Life and Health of Persons Engaged in Certain Trades and Professions.* The police power of the State is exercised in no realm of greater importance than the protection of the life and health of the people. The instrumentalities which are used to prevent the spread of diseases and to protect the public against the impositions of quacks, have already been discussed in Chapter IV. In this section will be considered the means provided: (1) for shielding the general public from such dangers as only experts can discover; and (2) for the safety of those persons engaged in occupations which are considered especially hazardous to life and health. In some cases it may be found that the legislation has sprung from the combined motives of guarding the pecuniary interests and promoting the physical and social welfare of the people.

Inspection of Oils. Soon after petroleum oils came into use for illuminating purposes, the numerous accidents demonstrated the necessity of providing some means of testing the inflammability of this commodity. The first law[2] in Indiana (1863) was permissive in character, The initiative

[1] See page 306 above.

[2] *Laws*, 1863, pp. 27–30.

was taken by the citizens themselves, who[1] made application to the judge of the court of common pleas. He was required to appoint a suitable examiner to test such oils and to reject as dangerous those falling below a certain standard. Penalties were prescribed for the violation of the act, but no reports were required of the inspectors. Neither was it their duty to institute proceedings against the violators of the law. The increasing consumption of petroleum oil led to the elaboration of this law in 1879. In order to carry out more effectually its provisions the administration was placed in the hands of a State Inspector of Oils, who was appointed by the Governor,[2] and was subject to removal by him. The Inspector had authority to appoint deputies and to prepare the forms of brands and stamps, and the general rules and regulations for inspection. It was made the duty of the Inspector or any deputy to enter complaint before any competent court against any trangressor of the law. In case of willful neglect to bring such an action, he was to be deemed guilty of a misdemeanor, and upon conviction to be fined and removed from office.[3] This thorough centralization secured uniformity of test and thousands of dollars' worth of property have been saved by excluding poor oils from the State.

Factory Legislation. Prior to the Civil War there are found no laws in Indiana which would fall under the title "factory acts." This is explained by the absence of the so-called factory system before that time. Since the war, however, governmental regulation has been introduced into this field. Such legislation had its beginning in 1867 and,

[1] At least five.

[2] In 1889, this power of appointment was conferred upon the State Geologist where it remained until restored to the Governor in 1901. *Laws*, 1889, p. 44; 1901, p. 518.

[3] *Laws*, 1879, *Reg. Sess.*, pp. 162–167.

naturally, applied to children. In that year the employment of children under 16 years of age in any cotton or woolen factory for more than 10 hours a day was prohibited.[1] For nearly twenty years there was no further progress; but from 1885 to 1893 additional laws[2] in the interest of women and children were enacted. The spirit shown by these acts was good; but they had little practical effect; because no special officers were designated to administer them. Although it was specifically made the duty of the prosecuting attorneys to enforce the acts of 1891 and 1893, these officers had neither the time nor the inclination to make thorough inspections and investigations in order to ascertain to what extent the laws were violated.

A more comprehensive law was enacted in 1897. Along with other provisions it defined the term "manufacturing establishment" more explicitly; raised the minimum age limit of children employed in such establishments to 14 years; prohibited the employment in them of males under 16 years of age and women under 18 years, for more than 10 hours per day or 60 hours per week; fixed the minimum age of persons operating elevators at 15 years;[3] forbade the use of tenement houses for shops, except upon the written permit of the inspector; and, finally, created the office of Factory Inspector. This officer is appointed by the Governor, with the advice and consent of the Senate. It is his duty to cause this act to be enforced and to see that all violations of it are prosecuted. For that purpose he is empowered to visit and inspect at all reasonable hours and as often as may be practicable and necessary all manufacturing

[1] *Laws*, 1867, p. 232.

[2] *Ibid.*, 1885, *Spec. Sess.*, p. 219; 1889, pp. 364–5; 1891, pp. 62, 331; 1893, pp. 147–8, 360.

[3] In some cases at 18. In 1899, the minimum age of all such operators was made 18.

establishments. He has authority to demand a certificate as to physical fitness from some regular physician in the case of any child who may seem physically unable to perform the labor assigned to it; and to prohibit the employment of any minor that cannot obtain such a certificate. If he deems it necessary, he may require fire escapes, guards about dangerous machinery, retiring rooms for women and the lime-washing or painting of walls and ceilings.[1]

Employers as well as employees were gratified with the improvement which soon resulted. Even business men who at first opposed the law co-operated heartily in its enforcement and considered its provisions of advantage to themselves as well as to the operatives.[2] In very few cases was there any attempt to evade or obstruct the law, and many provisions for the comfort and convenience of employees were made even by those who were not subject to the law.[3] In 1899 the provisions of the act were extended to mercantile establishments, laundries, renovating works, bakeries and printing offices. The terms "child," "young person," and "women" were defined to be respectively persons under fourteen, persons over fourteen and under eighteen, and females over eighteen years of age. The employment of women and girls in any capacity in manufacturing establishments between 10 p. m. and 6 a. m. was absolutely prohibited. The execution of the law was put in charge of a Department of Inspection, with a Chief Inspector appointed as in 1897. The Inspector and his deputies have power as notaries public to administer oaths and take affidavits in matters connected with the law.[4]

The Chief of the Department of Inspection is also charged with the enforcement of the law of 1899,[5] providing for the

[1] *Laws*, 1897, pp. 101–108.

[2] *Annual Report of Factory Inspector*, 1897, p. 4. [3] *Ibid.*, 1898, pp. 6, 7, 15.

[4] *Laws*, 1899, pp. 231–240. [5] *Ibid.*, pp. 473–6.

protection of the public from fire. He has considerable discretionary power in regard to the character of the equipment, *et cetera*.

In 1901 the enforcement of the law providing for the sanitation of all food-producing establishments, the health of the operatives and the wholesomeness of the food products thereof, was also intrusted to the Department of Inspection.[1]

While factory legislation has been chiefly in the interest of women and children, a few attempts have been made to protect the adult males employed in certain occupations.

The first industry in Indiana in which there appeared need of State interference to prescribe the conditions of labor in the interest of the health and safety of adult workmen, was coal mining. In 1879[2] a law forbade the employment of boys under fourteen years of age; specified certain requirements as to the ventilation, the number of outlets, the construction and examination of lifting appliances of mines; and required the employment of competent and sober engineers about the mines. It was at once apparent that the administration of the law could not be left to the regular police officers. Accordingly, in order to provide efficient examination and inspection of the mines and to insure the faithful execution of the law, its administration was placed in the hands of an experienced Mine Inspector appointed directly by the Governor.[3] For several years there was more or less difficulty in the way of enforcing the act.[4] But the principle of the law was maintained, its provisions extended, the penalties made more rigorous, the powers of the

[1] *Laws*, 1901, pp. 42–3.

[2] A bill passed the House in 1872 but failed to become a law. *House Journ., Spec. Sess.*, 1872, pp. 636–7.

[3] *Laws, Reg. Sess.*, 1879, pp. 19–25.

[4] *Reports of Mine Inspector*, 1883, pp. 7–12; 1884, p. 8; 1888, p. 10.

Inspector enlarged and the number of his assistants increased.[1] In 1889 the bureau was put under the control of the State Geologist, and the Inspector is now appointed by that officer. Since 1889, also, the expenses of the administration have been assumed by the State and not, as formerly, put upon the mine owners or the workmen.

When natural gas was discovered in Indiana, it was quickly seen that special legislation was necessary to protect the lives and material interests of the people. Town boards and city councils were empowered to provide by ordinance reasonable regulations for the safe supply, distribution and consumption of natural gas within their respective limits.[2] In 1889 regulations in regard to the drilling and casing of wells and the piping of gas were prescribed.[3] At the same time the office of Inspector[4] of Natural Gas and Natural Gas Piping was created, to be filled by an appointee of the State Geologist. It is his duty to see that every precaution is taken to insure the health of the workmen employed in opening natural gas wells and in utilizing their supplies; that the provisions of the laws in regard to natural gas are faithfully carried out; and that the penalties are enforced for any violation of them. The scope of the law has been broadened by subsequent prohibitions and restrictions,[5] and by increasing the powers of the Inspector of Natural Gas.[6] In spite of all these measures there still exist complaints of the wasteful use of this natural resource.

In 1889 a law declared eight hours to be a legal day's work for all classes of mechanics, workingmen and laborers, excepting those engaged in agricultural or domestic labor; but it permitted overwork for an extra compensation by

[1] *Laws*, 1883, p. 76; 1889, pp. 445–7; 1891, pp. 57–62, 73–4; 1897, pp. 127–8, 269, 270; 1899, pp. 382–3; 1901, pp. 540–1.

[2] *Laws*, 1887, p. 36. [3] *Laws*, 1889, pp. 369–372. [4] *Ibid.*, p. 47.

[5] *Ibid.*, 1891, pp. 55, 89; 1893, pp. 300–1. [6] *Ibid.*, 1899, p. 83.

agreement between employer and employee.[1] This proviso has deprived the law of all its strength.

Of much more service have been the laws regulating the payment of wages. In 1887 employers engaged in mining or manufacturing were required to pay their employees every two weeks in lawful money of the United States.[2] In 1891, in certain industries, weekly payment of employees was required.[3] Two years later there was a return to the bi-weekly method.[4] No special officers were charged with the enforcement of any of these acts and, consequently, laborers seldom complained for fear of discriminations against them or loss of employment. The act of 1899,[5] providing for the weekly payment of wages,[6] prohibiting employers from assessing fines against the wages of employees and forbidding the assignment of future wages, was more successful. It is made the duty of the Department of Inspection to enforce the provisions of the act by judicial processes in the name of the State.

Because of the extensive growth of the use of steam as a motive power and of the numerous casualties on account of the defective construction and unsafe condition of engines, there has been a demand for the official inspection of all steam-boilers.[7] A number of bills providing for the inspection of boilers by a State officer and for the licensing of engineers by a State examiner or board have been introduced in the General Assembly,[8] but none of them has yet passed.

[1] *Laws*, 1889, p. 143. [2] *Ibid.*, 1887, pp. 13, 14.

[3] *Ibid.*, 1891, pp. 108–9. [4] *Ibid.*, 1893, p. 201. [5] *Ibid.*, 1899, pp. 193–4.

[6] The Labor Commissioners were authorized to make exemptions after hearing both parties in case they both preferred a less frequent payment.

[7] *Messages of Governors, Sen. Journ.*, 1887, p. 61; *House Journ.*, 1889, p. 44; *House Journ.*, 1895, p. 631; also *Report of Factory Inspector*, 1898, pp. 12, 13, 24.

[8] *House Journ.*, 1889, p. 667; 1891, pp. 62, 620–1; 1893, pp. 455, 707; 1895, pp. 92, 148; 1897, pp. 509, 1023; 1899, pp. 177, 697. Two of these bills passed the House, but failed in the Senate.

III. *The Protection of the Pecuniary Interests of the People.* In the United States it has been generally held that, in his material or pecuniary affairs, the individual should be self-dependent; and that the State should do nothing which the individual could do as well himself, or which being done by the State, would undermine his self-reliance or make him less responsible and less vigilant. As society has grown more complex; as fiduciary institutions have multiplied; as business enterprises are more and more carried on by means of corporations where the resources are furnished by many, but where the management is conducted by a few; the need of governmental inspection and examination in the interest of the individual has become imperative. Even in cases where annual statements are published, they are often too complex for the laymen to understand. The innocent investors, depositors or other creditors must, therefore, look to the State for assurance that certain financial institutions are conducted upon sound business principles. Publicity enforced by the State is becoming more and more essential to secure honest management and safety of investments and to protect the general public. Now, the ordinary police officers and magistrates are not competent to execute such laws as may be enacted for this purpose. Recourse must be had to those who have technical knowledge and expert skill, and who are removed from the influence of local prejudices and favoritism.

Prior to 1852 few official reports were required from financial, insurance or other credit companies. As the State owned one-half the stock of the State Bank of Indiana, it was necessary in self-protection to insist upon full and regular statements from that institution. The savings institutions incorporated after 1835 were usually required to report annually to the General Assembly.[1] No examination was

[1] *Special Laws*, 1835–6, pp. 146, 164, 177, 183, 205, 222, 225, 240, 279, 280,

authorized until 1869, when provision was made for an examination at least once in two years by the Auditor or his agent.[1] The "free banks" which were authorized under the act of 1852[2] were required to make semi-annual statements of their condition to the Auditor of State; but no authority to make examinations was given. Later all corporate banks,[3] loan and trust or safe deposit companies[4] were declared to be subject to official examinations similar to those made in the case of national banks. Individual or private banks are not subject to these checks. As they do a regular banking business, the public should have the same opportunity to be informed from time to time of their condition.

Although the organization of building, loan fund and savings associations was authorized as early as 1857,[5] no official reports nor examinations were required until 1893. The Auditor was then constituted the building association inspector, with power to examine any association whenever he deemed it necessary. Annual reports are required to be made to him in all cases.[6]

Before 1852 no annual statement of the financial condition of insurance companies was required to be published;[7] and the law[8] of that year imposing such an obligation did not apply to corporations organized prior to that date. The frequent losses sustained by citizens of the State by reason

293; *Ibid.*, 1836–7, pp. 93, 246; *Ibid.*, 1838–9, p. 103. In a few cases no report was required. *Ibid.*, 1836–7, pp. 190–194, 261–266; *Ibid.*, 1849–50, p. 266.

[1] *Laws, Spec. Sess.*, 1869, p. 111. The annual reports were made to the auditor also.

[2] *Rev. Stat.*, 1852, i, pp. 158–9.

[3] *Laws, Reg. Sess.*, 1873, pp. 26–7. [4] *Laws*, 1893, pp. 346–353.

[5] *Ibid.*, 1857, pp. 75–9. [6] *Ibid.*, 1893, pp. 274–282.

[7] *Spec. Laws, Sess.*, 1830–1, pp. 28, 33; *Ibid.*, 1835–6, pp. 116, 127, 146, 157, 191.

[8] *Rev. Stat.*, 1852, i, p. 335.

of their having carried insurance in insolvent companies, led to the enactment of a law in 1865, which attempted to guarantee the ability of such associations to meet their liabilities. It forbade foreign insurance companies doing business within the State without first producing a certificate of authority from the Auditor.[1] He had no authority to demand reports or make examinations.[2] These restrictions proved inadequate. The Auditor in 1872 said that Indiana was greatly in need of legislation to protect the people from worthless insurance adventurers.[3] An important amendment was made to the law in 1877.[4] Comprehensive powers were granted to the Auditor to enable him to examine every detail of the business of any insurance company, whenever in his judgment such an examination was required for the interests of the policy holders. He had authority to revoke or modify any certificate of authority, when any condition prescribed by law for granting it no longer existed, and to institute prosecutions for any violation of the provisions of the law. Many insurance companies did not consider the law applicable to them and failed to comply with its provisions.[5] In his report in 1882 the Auditor used these strong words: "The absence of suitable laws for the protection of the people from deception and imposition has made Indiana the favorite field for the successful operation of every conceivable form of swindling insurance."[6] Since that time numerous amendments have been made to the laws giving

[1] To procure such a certificate, each company was required to file with the auditor a statement giving information as to the financial standing of the company and showing that it had at least $100,000 of its capital invested in good stocks or bonds.

[2] *Laws, Spec. Sess.*, 1865, pp. 105–108.

[3] *Rep't of Aud.*, 1872, pp. 94, 96, 99, 101.

[4] *Laws, Reg. Sess.*, 1877, pp. 66–68.

[5] *Rep't of Aud.*, 1881, p. xiii.

[6] *Rep't of Aud.*, 1882, pp. 71–2.

the Auditor authority to make examinations; to require minute statements of all insurance companies [1] and fraternal beneficiary associations; [2] and to demand a deposit of bonds or money in the case of foreign insurance companies. Similar restrictions have recently been imposed upon foreign trust or investment companies.[3] The centralization of the administration of the laws regulating insurance has given to the citizens protection against fraudulent and reckless companies.

In still another field the State has tried to protect the people against frauds by the creation of a special officer with powers of inspection. In 1881 the office of State Chemist was established and it was made the duty of this officer to analyze commercial fertilizers, print the result of such an analysis in the form of a label and to furnish a copy of it to agricultural papers for publication. It was made unlawful for any person, thereafter, to sell such fertilizers without having a label furnished by the State Chemist attached thereto.[4] The protection secured by it was only nominal, since it did not contain any provision looking to the detection of frauds after the analysis had been made. This defect was in part corrected in 1899 and 1901.[5]

In 1899 a further protection was afforded to the property interests of the citizens by the creation of the office of State Entomologist. This officer is appointed by the Governor. It is his duty to inspect all nurseries at least once a year; to inform the proper authorities of the presence of insects or fungi injurious to trees or plants; and to notify the owner of

[1] *Laws*, 1883, pp. 203–8; 1885, *Reg. Sess.*, pp. 54–8; 1899, pp. 64–7; 1891, pp. 413–4; 1893, pp. 174–180; 1897, pp. 319–327; 1899, pp. 31–4, 220–1; 1901, pp. 321–2, 408–9, 617.

[2] *Laws*, 1899, pp. 177–187; 1901, pp. 315–317.

[3] *Ibid.*, 1901, pp. 487–8, 549, 550.

[4] *Laws, Spec. Sess.*, 1881, pp. 511–2. [5] *Laws*, 1899, p. 49; 1901, pp. 413–5.

any such affected stock that he must take measures to destroy such pests.[1]

In 1901 there was established a State Forestry Board, the members of which are appointed by the Governor. One member, the secretary, is required to have "special knowledge of the theory and art of forest preservation." At present the chief function of the board is to collect, classify and disseminate information respecting forests, timber lands and forest preservation and to recommend plans for the establishment of State forest reserves.[2] The powers and functions of this bureau will doubtless be extended.

IV. *The Protection of Fish and Game.* As soon as fish and game began to grow scarce in Indiana, the wanton or unrestricted killing of them was forbidden by law and made a misdemeanor.[3] But none of the numerous laws made it the especial duty of any officer to see to their enforcement. In 1881 the office of Commissioner of Fisheries was created; but he had no supervision over the execution of the laws restraining the killing of fish. His duty was to promote the propagation of fish.[4] Nevertheless, he caused the conviction of a large number of fish pirates, although he had no more power to do that than any other citizen.[5]

In 1889 it was made the duty of road supervisors to arrest or cause to be arrested and prosecuted any persons violating laws for the protection of fish.[6] This law proved a failure, largely because the officers had a personal interest in, or friendship for, the violators of the laws.[7] However, the sen-

[1] *Laws*, 1899, pp. 224–6.

[2] *Ibid.*, 1901, pp. 62–3.

[3] *Ibid.*, 1848–9, p. 94; *Rev. Stat.*, 1852, ii, p. 447; *Laws*, 1857, pp. 39, 40; 1863, p. 20; 1867, pp. 128–9; 1871, p. 24; 1875 (*Reg. Sess.*), p. 111; 1877, pp. 69, 70; 1879, pp. 242–5; 1889, p. 102–3.

[4] *Laws, Spec. Sess.*, 1881, p. 516.

[5] *Rep't of Com'r of Fisheries*, 1888, p. 6.

[6] *Laws*, 1889, pp. 449–450.

[7] *Rep't of Com'r of Fisheries*, 1896, pp. 10–12.

timent in favor of the protection of fish by the enforcement of the laws steadily grew and spread.

In 1897 it was made the duty of the Commissioner of Fisheries to see that all laws for the protection of fish were enforced, and to institute proceedings against all violators. He also had power to appoint one or more deputies in each county.[1] Within 18 months 244 convictions for violation of the fish laws were secured and the amount from fines which was turned over to the State more than doubled the whole appropriation for the administration of the laws.[2] This was accomplished without the possession of police powers by the deputies. Two years later such powers in respect to the fish or game laws were conferred upon the commissioner and his deputies; and their jurisdiction was extended over the laws designed to protect song-birds and game.[3] The laws were made still more rigorous in 1901.[4]

It is interesting to note that in a number of the cases treated in this chapter, as soon as the need of protection or regulation was recognized, the first remedial measures were restrictive or prohibitive acts the enforcement of which was left to the initiative of individuals and the ordinary police officers and magistrates. As experience demonstrated the futility of this arrangement, special officers, having peculiar fitness for the work, were designated to see that the laws were obeyed. In some cases these have been put directly under the control or supervision of State officers clothed with considerable discretionary or administrative authority.

[1] *Laws*, 1897, pp. 109, 110.

[2] *Rep't of Com'r of Fisheries*, 1897–8, pp. 14, 15.

[3] *Laws*, 1899, pp. 44–6, 195–198. [4] *Ibid.*, 1901, pp. 77–80, 442–7.

CHAPTER VII

CONCLUSION

THIS detailed examination of administration in Indiana has shown that during the greater part of the territorial era —a period of tutelage—a closely centralized system existed. As soon as a State government was organized, the theory of local self-government was quickly applied to local matters and to many affairs properly belonging to the State administration. For twenty-five years there was little change in this respect. The steps leading to the present centralized system were, with few exceptions, taken in three distinct periods.

In the first period—from 1840 to 1852—the Treasurer of the State was made the Superintendent of Common Schools; the office of State Superintendent of Public Instruction was later created; laws authorizing general taxation for school purposes were enacted; the consolidation of school funds was effected; State institutions for the education of the blind and the deaf, and for the treatment of the insane were established; a State Board of Equalization was created, and the centralization of the assessment of transportation companies was begun.

During and immediately succeeding the Civil War—from 1861 to 1873—numerous advances toward centralization were again made. This is shown by the reorganization of the State Board of Education with broad general powers, the establishment of county boards of education and the creation of the office of county superintendent. The State assumed

the care of disabled soldiers and their dependent children, and founded the Reform School for boys, the Women's Prison and Industrial School for Girls. The power of the State Board of Equalization was extended over the assessment of all corporations.

The last period of development began about 1889 and has continued to the present. It has witnessed the increase of the powers of the State Superintendent; the establishment of compulsory education; and the extension of the power of the State Board of Education so that it controls the adoption of books, directs the high school policy and regulates the examination of teachers. The Board of State Charities has been instituted and numerous reforms in the penal and charitable systems have been made. The authority of the State Board of Health has been greatly enlarged.[1] An efficient regulation of the practice of medicine, dentistry, pharmacy and embalming has been undertaken; and the prevention and suppression of the diseases of animals have been attempted. Authority over the equalization of the assessment of personal property has been conferred upon the State Board of Tax Commissioners. The metropolitan police system[2] has been applied to more cities. Another evidence of the drift towards centralization in this period is found in the legislation concentrating in the hands of the mayors of the five largest cities[3] the control over the administrative affairs of their respective municipalities.

The evidence already presented has been sufficient to demonstrate that this centralization has resulted in a more efficient administration, has secured a greater safety of funds,

[1] It was first established in 1881. [2] First used in 1883.

[3] Indianapolis (*Laws*, 1891, pp. 137 ff.); Evansville (*Laws*, 1893, pp. 65 ff.); Fort Wayne (*Laws*, 1893, pp. 202 ff.; 1897, p. 197; 1901, pp. 197 ff.); Terre Haute (*Laws*, 1899, pp. 270 ff.; 1901, pp. 94 ff.); South Bend (*Laws*, 1901, pp. 108 ff.).

has protected more thoroughly the interests of the whole people, has ameliorated the condition of the unfortunate classes for whose care and education the State is responsible, has led to the substitution of the reformatory in place of the vindictive principle in the management of the penal institutions and has helped to elevate the social and moral tone by diffusing knowledge and culture through the agency of the common schools.

In addition to the special causes mentioned heretofore in the discussion of particular phases of administration, attention may here be directed to some general causes and conditions which have prepared the way for centralization or have rendered it inevitable.

One of the first things deserving notice is the intimate relation between economic conditions and political ideas and policies. "The chief considerations in human progress are the social considerations and . . . the important factor in social change is the economic factor."[1] The growth of population is in a great measure determined by economic conditions, being dependent largely upon the productivity of industry and the standard of living. An increase of population is of itself a sufficient cause for the extension of governmental functions and a more careful organization of the machinery of administration. The following table shows the growth of population in Indiana since 1800:[2]

	1800.	*1810.*	*1820.*	*1830.*	*1840.*	*1850.*	*1860.*	*1870.*	*1880.*	*1890.*	*1900.*
Total population in thousands.	5	24	147	343	685	988	1,350	1,680	1,978	2.192	2,516
Density per square mile.....	0.02	0.7	4.1	9.6	19.1	27.5	37.6	46.8	55.1	61.1	70.1

This increase in the number of inhabitants has made inevitable a larger expenditure of public revenue and the bur-

[1] Seligman, E. R. A., *The Economic Interpretation of History*, in Political Science Quarterly, Vol. xvii, p. 76.

[2] Twelfth Census of U. S., *Population*, pp. 2, 3, 6.

dens of taxation have consequently been greater. Increased taxes have impelled the taxpayers and the administrative officers to inquire into the means which might diminish this load. As a result of numerous experiments, it has been found that a greater efficiency of administration and a more just distribution of the burdens can be attained by establishing a considerable degree of centralization. The same cause has necessitated the expansion of the school system and the extension of the police powers of the State. Experience has again taught the same lesson in respect to administration in these fields.

There has been not merely an increase in the density of population but there have been marked changes in its distribution and in the occupations of the people. The following figures exhibit the percentage of the total population of Indiana dwelling in cities of 8000 inhabitants or more for each decade from 1850:

1850.	*1860.*	*1870.*	*1880.*	*1890.*	*1900.*
2.5[1]	5[1]	10[1]	12.3	18.3	28.1

The development of city life has created new relations and presented difficult problems which have called for more and stricter governmental interference. The concentration of the population in cities is closely related to two other important economic factors—the transition from an agricultural to a manufacturing stage and the development of the facilities of transportation. Fifty years ago the value of the products manufactured in Indiana was only $18,700,000 and her rank as a manufacturing state was fourteenth with 17 states below her; although on the basis of population she was outranked by only six states. In 1900, while holding the eighth place according to population, she ranks eighth

[1] Approximately.

as a manufacturing state with a product valued at $378,000,000.[1]

In an agricultural society, where each family or each community is very largely self-dependent, the conditions are comparatively simple. A complex industrial state is characterized by a high degree of specialization, a more minute division of labor and a localization of production, which render the social units more dependent upon one another for the satisfaction of their economic wants. Exchange of commodities becomes a more important economic process and a closer association results. To promote the interchange of goods and services, the facilities of transportation must be improved and increased. Such an economic transition must necessarily react upon the political theories and practices of the people. When the only means of communication in Indiana were blazed paths, corduroy roads, or a few canals and navigable streams, extravagance or corruption of municipal governments, and inefficiency in the local administration of the police laws, in the suppression of contagious diseases, in the care of the poor and even in the educational system, had relatively little effect upon the people of other communities. But as the means of communication and transportation[2] were multiplied and perfected, as capitalists

	1850.	*1890.*	*1900.*
[1] Value of manufactured products in mils. ..	$18.7	$226.8	$378.1
Rank as a manufacturing state	14	11	8
Rank according to population	7	8	8

Tenth census of U. S., *Manufactures*, folio, p. 18; Twelfth Census, *Population*, p. 3, and *Bulletin*, 150, p. 11.

[2] Railroad mileage in Indiana:

	1845.	*1850.*	*1860.*	*1870.*	*1880.*	*1890.*	*1900.*
Total mileage.....	30	228	2,163	3,177	4,373	6,109	6,563
No. of miles to each 10,000 of population	.35*	2.3	16	18.9	22.1	27.8	26
No. of miles to each 1,000 square miles.....	.83	6.3	60.2	88.4	121.8	171.2	182.4

* Estimated.

made investments in various parts of the State and as people became more conscious of their economic interdependence, the evil consequences of disease, corruption, disorder and illiteracy were no longer isolated phenomena, but affected all parts of the body politic. The local interests became merged in those of the whole State. There was gradually unfolded a clearer view of the common weal; a higher State spirit was aroused, and a deeper feeling of sympathy and a keener sense of duty were disseminated. Hence, there followed an insistent demand for State control or State supervision over the administration of affairs which had formerly been wholly neglected or left to the uncertain and inefficient administration of local officers.

This economic transition has been coincident with, and affected by, that larger national and international movement towards the consolidation of industry. It is but natural that as the great effectiveness of consolidation in the field of production is realized, men should seek to apply the same methods in the domain of political administration.

Political events seem also to have had some influence in hastening the movement towards centralization. During the Civil War there was such an exercise of executive power by the President of the United States[1] and the Governor of Indiana[2] that it amounted almost to usurpation. It seems reasonable to assume that this exhibition of power by the administrative departments under the direction of the chief executives led many statesmen to approve of, or acquiesce in, the enlargement of the authority of central administrative officers. At least, in Indiana this was a period of rapid advancement towards centralization.[3]

The progress of science, especially of medical science, has

[1] Burgess, J. W., *The Civil War and the Constitution*, i, 232 ff.; ii, 114.

[2] Foulke, W. D., *Life of Oliver P. Morton*, i, pp. 188, 223, 253–5.

[3] See pages 227–8 above.

contributed not a little to this movement. The demonstration of the truth of the germ theory of disease has disclosed the fact that many diseases are contagious. The public have been convinced that much suffering, death and sorrow would be unnecessary with the use of scientific methods of suppression under the direction or supervision of experts. This can best be secured by the establishment of a central authority.

The growth of the humanitarian spirit has done much to urge us towards this goal. There is a profounder sense of duty towards the helpless, the unfortunate and even towards the criminal. This sense of duty has led to the establishment of State and local institutions for the care, treatment, education, restraint or reformation of these classes; and has necessitated the expenditure of large sums of money. In addition, this sense of obligation and the burden of the outlay have forced the people and the statesmen to make a thorough investigation of the methods of dispensing charity and inflicting punishments, in order to ascertain whether the highest social good is accomplished in the most economical way. The scientific study of these problems has driven investigators to the conclusion that this end can not be attained without an increasing degree of centralization.

The progress towards centralization has been disputed at every point by the partisans of local self-government. This contest is one phase of the old controversy over the proper domain of local and central governments, which began with the organization of civil society and which will doubtless continue until the end of human government. The theory of local self-government has been so firmly established in America, that any scheme which seems to trespass upon its sphere must be justified by results of positive good. In this connection it is necessary to remember that any form of government is devised and instituted to promote the welfare

of the society within which it is established. No particular polity has received Divine sanction as being the only fit and appropriate form of government for all peoples, or for any people at all times and all stages of its progress. Governments are not absolutely, but only relatively, perfect. As the social and economic conditions of life change, as culture broadens and deepens, as ethical standards rise; so, political ideals and institutions must change in order that they may conserve man's highest interest. This view was reflected by Thomas Jefferson, who was an ardent admirer of local self-government.[1] He held that the earth belonged to the living and that the dead had no legal rights over it; that no society had any right to make perpetual laws; that changes of mind and culture must be accompanied by changes of government; and that a constitutional convention should be held every nineteen years for the purpose of changing the fundamental laws so that they would harmonize with the views of the living.[2]

If we accept the maxim that all exclusively local interests shall be controlled by the local government, we are immediately brought face to face with the question: What are local interests? What yesterday was of local concern only, may to-day be of vital moment to the whole State. It is the tendency among a progressive people for the personality of the individual to expand so as to include within its view the welfare of the neighborhood and the State. State control and supervision will be assumed more and more, as it appears that the interests of the whole State are at stake and not merely those of individuals or local communities.

After all, the restrictions imposed upon local governments by such action are more apparent than real. Since the perpetuity of democratic institutions depends upon having an

[1] Jefferson, Thomas, *Writings* (Ford's Ed.), ix, 427.

[2] *Ibid.*, v, 116–8, 121–2.

enlightened and self-contained population, the State must reduce to a minimum the evils of illiteracy and crime by the establishment of agencies for the education and elevation of all its citizens. This in turn will guarantee to the community and the individual a more genuine liberty and a freer opportunity for the realization of his best aspirations. If localities persist in tolerating unsanitary conditions which breed disease germs, the authority of the State must be invoked to abolish this menace to the public health of the entire commonwealth.

In the matter of charity and correction, local selfishness or short-sightedness may lead to the adoption of methods, or the tolerance of conditions, incompatible with an enlightened humanitarian sentiment and detrimental to the material interests of the whole State. The local community has no grounds for demanding the "liberty" to neglect human beings when they are gathered together in charitable or correctional institutions and subjected to revolting treatment or indecent surroundings. Whose "liberty" is infringed upon, when the State steps in to protect these helpless unfortunates? It is an interference only with the license, ignorance or indifference of incompetent or corrupt officials.

In respect to taxation—especially for the support of the Commonwealth—the State must not abdicate its responsibility by leaving wholly to the discretion or honesty of local officers the assessment of property. The disadvantages arising from such an arrangement have been examined in a former chapter.

Local self-government does not mean the right to select local officers and then to leave to their own discretion or their own honesty the enforcement of State laws. There must be behind them a power of compulsion. If this is not furnished by the locality where everybody's business is nobody's business, then the State must constitute authorities to

see that local officials do their duty or else take over entirely the administration.

Both theory and practice demonstrate that this gravitation towards centralization in administration is in harmony with our progressive political ideas, our pecuniary interests and our highest prosperity and happiness. This conclusion does not relegate the theory of local self-government to the limbo of obsolete doctrines. There will always remain a field within which the people of the respective communities will have free choice as to their policies. In general, it may be said, those public improvements which have an exclusively local interest, should be left to the wishes and the wisdom of the inhabitants of the localities concerned. They have better opportunities to ascertain the desires and the needs of the respective communities. This conclusion does not, therefore, mean an abandonment of the ideals of the Fathers. It does signify, however, that new limits must be set to the spheres of local activities and central jurisdiction as the social and economic needs may require a re-adjustment.

When conservatism becomes an irrational and unwavering devotion to particular forms or methods of government, it ceases to be commendable. The best evidences of political capacity and wise statesmanship are a willingness and a power to adapt old principles to new conditions and opportunities.

VITA

THE author of this dissertation, William A. Rawles, was born December 4, 1863, at Remington, Indiana. He attended the common schools of his native town and of Bloomington, Indiana. He was prepared for Indiana University at the Preparatory School of that institution. In 1880 he entered Indiana University and received the degree of A. B. in 1884.

During the ten years immediately following his graduation, Mr. Rawles was engaged in teaching in secondary schools, occupying the following positions: Principal of High School, Mitchell, Ind., 1884; Assistant in Preparatory Department of Indiana University, 1885–87; Principal of High School, Vincennes, Ind., 1887–89; Principal of High School, Sedalia, Mo., 1889–92 and 1893–94; Assistant in High School, St. Louis, Mo., 1892–93.

In 1894 he returned to Indiana University as a graduate student and Instructor in History. In 1895 the degree of A. M. was conferred upon him by his Alma Mater. During the year 1895–96 he held a Fellowship in Political Economy at Cornell University. He heard lectures under Professors Jeremiah W. Jenks, Charles H. Hull, Walter F. Willcox, Moses Coit Tyler and George L. Burr; and was a member of the Political Science Seminary and of the American History Seminary. From 1896 to 1898 he was Instructor in History in Indiana University. During 1898–99 he was a graduate student at Columbia University; Administration was his major subject and Constitutional Law and Finance

were his minors. He attended the lectures of Professors Frank J. Goodnow, John W. Burgess, Edwin R. A. Seligman, John B. Moore, C. E. Merriam, L. Farrand, William Z. Ripley and Frederic Bancroft, and was a member of Professor Goodnow's seminar in Administration and Professor Burgess' seminar in Constitutional Law. From 1899 to 1901 he was Assistant Professor of History and Economics in Indiana University and now holds the position of Assistant Professor of Political Economy in that institution. In addition to this dissertation the author has published the following: *The Government of the People of the State of Indiana*, Eldredge and Brother, Philadelphia, 1897; and (in collaboration with Professor Ernest L. Bogart) *A Trial Bibliography and Outline of Lectures on the Financial History of the United States*, 1901.

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